

**HEALTH AND SAFETY CODE**  
**TITLE 1. GENERAL PROVISIONS**  
**CHAPTER 1. GENERAL PROVISIONS**

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Chapter 323, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable, by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 1.003. INTERNAL REFERENCES. In this code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 1.004. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 1.005. DEFINITION. In this code, "licensed practitioner" includes a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 1, eff. September 1, 2005.

## TITLE 2. HEALTH

### SUBTITLE A. TEXAS DEPARTMENT OF HEALTH

#### CHAPTER 11. ORGANIZATION OF TEXAS DEPARTMENT OF HEALTH

Sec. 11.001. DEFINITIONS. In this title:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993.

Sec. 11.002. PURPOSE OF BOARD AND DEPARTMENT. The Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

For expiration of Subsections (b) and (c), see Subsection (c).

Sec. 11.003. SUNSET PROVISION. (a) The Texas Board of Health and the Texas Department of Health were abolished by Section 1.26,

Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of those entities under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, this chapter expires September 1, 2015.

(b) In the review of the Department of State Health Services by the Sunset Advisory Commission, as required by this section and Section 1001.003, the sunset commission shall review the powers and duties exercised by the department under Chapter 108 and determine whether the department, under that chapter, is:

(1) achieving the legislature's intent of empowering consumers with information to make informed health care decisions;

(2) maintaining appropriate privacy and security standards for patient information; and

(3) limiting the patient information the department collects to the information necessary for performing the department's duties under Chapter 108.

(c) The Sunset Advisory Commission shall report its findings to the legislature in the report required by Section 325.010, Government Code. This subsection and Subsection (b) expire September 1, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.15, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.02, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.08, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 919 (H.B. 1394), Sec. 1, eff. June 14, 2013.

Sec. 11.004. COMPOSITION AND RESPONSIBILITY OF DEPARTMENT. (a) The department is composed of the board, the commissioner, an administrative staff, the Texas Center for Infectious Disease, the Rio Grande State Center, and other officers and employees necessary to perform efficiently its powers and duties.

(b) The department is the state agency with primary responsibility for providing health services, including:

- (1) disease prevention;
- (2) health promotion;
- (3) indigent health care;
- (4) certain acute care services;
- (5) health care facility regulation, excluding long-term care facilities;
- (6) licensing of certain health professions; and
- (7) other health-related services as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 107, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 263, Sec. 1, eff. May 22, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 650 (H.B. 1850), Sec. 1, eff. June 19, 2009.

Sec. 11.0045. COMPREHENSIVE STRATEGIC AND OPERATIONAL PLAN.

(a) The board shall develop, publish, and to the extent allowed by law implement a comprehensive strategic and operational plan.

(b) The board shall publish the plan not later than September 1 of each even-numbered year. The board shall at a minimum:

- (1) make the plan available on its generally accessible Internet site; and
- (2) make printed copies of the plan available on request to members of the public.

(c) The plan at a minimum must include:

- (1) a statement of the aim and purpose of each of the department's missions, including:
  - (A) the prevention of disease;
  - (B) the promotion of health;
  - (C) indigent health care;
  - (D) the protection of parents' fundamental right to direct the health care and general upbringing of their children;
  - (E) acute care services for which the department is responsible;
  - (F) health care facility regulation for which the department is responsible;
  - (G) the licensing of health professions for which the

department is responsible; and

(H) all other health-related services for which the department is responsible under law;

(2) an analysis regarding how each of the department's missions relate to other department missions;

(3) a detailed analysis of how to integrate or continue to integrate department programs with other department programs, including the integration of information gathering and information management within and across programs, for the purpose of minimizing duplication of effort, increasing administrative efficiency, simplifying access to department programs, and more efficiently meeting the health needs of this state;

(4) a detailed proposal to integrate or continue to integrate department programs with other department programs during the two-year period covered by the plan, to the extent allowed by law and in accordance with the department's analysis;

(5) a determination regarding whether it is necessary to collect each type of information that the department collects, and for each type of information that it is necessary for the department to collect, whether the department is efficiently and effectively collecting, analyzing, and disseminating the information and protecting the privacy of individuals;

(6) an assessment of services provided by the department that evaluates the need for the department to provide those services in the future;

(7) a method for soliciting the advice and opinions of local health departments, hospital districts, and other public health entities, of recipients and providers of services that are related to the department's missions, and of advocates for recipients or providers for the purpose of identifying and assessing:

(A) the health-related needs of the state;

(B) ways in which the department's programs and information services can be better integrated and coordinated; and

(C) factors that the department should consider before adopting rules that affect recipients or providers of services that are related to the department's missions;

(8) a comprehensive inventory of health-related information resources that meet department criteria for usefulness and applicability to local health departments, to recipients or providers of services that are related to the department's missions, and to

nonprofit entities, private businesses, and community groups with missions that are related to health;

(9) a statement regarding the ways in which the department will coordinate or attempt to coordinate with federal, state, local, and private programs that provide services similar to the services provided by the department;

(10) a list of other plans that the department is required to prepare under state law and a recommendation regarding which plans are obsolete or duplicate other required department plans; and

(11) an assessment of the extent to which previous plans prepared by the department under this section have effectively helped the department to identify and achieve its objectives, to improve its operations, or to guide persons who need to identify department services, identify department requirements, or communicate effectively with department personnel.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 12, eff. June 17, 2011.

Sec. 11.005. COMPOSITION OF BOARD. (a) The board is composed of seven members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(c) Four members of the board must have a demonstrated interest in the services provided by the department, and three members must represent the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1170, Sec. 16.01, eff. Sept. 1, 2003.

Sec. 11.0055. REQUIRED BOARD MEMBER TRAINING. (a) A person

who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the department and the board;
- (2) the programs operated by the department;
- (3) the role and functions of the department;
- (4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 11.006. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is employed by or participates in the management of a

business entity or other organization regulated by the department or receiving funds from the department;

(2) is registered, certified, or licensed by the department or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the board.

(c) A person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in the field of health care may not be a board member or a board employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 11.007. TERMS. Board members serve for staggered six-year terms, with the terms of two or three members expiring February 1 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1170, Sec. 16.02, eff. Sept. 1, 2003.



Sec. 11.008. OFFICERS. Not later than September 1 of each odd-numbered year, the governor shall designate one board member as chairman and one member as vice-chairman.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.009. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 11.005(a);

(2) does not maintain during service on the board the qualifications required by Section 11.005(a);

(3) violates a prohibition established by Section 11.006(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the commissioner shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 1.06, eff. Sept. 1, 1999.

Sec. 11.010. PER DIEM; REIMBURSEMENT FOR EXPENSES. A board member receives no fixed salary but is entitled to receive:

(1) a per diem as prescribed by the General Appropriations

Act for each day spent in performing the member's official duties;  
and

(2) reimbursement for travel expenses and other necessary expenses incurred in performing official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993.

Sec. 11.011. MEETINGS. (a) The board shall meet in the city of Austin or in other places fixed by the board.

(b) The board shall meet at least once each calendar quarter on dates determined by the board and shall hold special meetings at the call of the chairman. The chairman shall give timely notice to each member of any special meeting.

(c) A meeting of a board committee shall be held in compliance with Chapter 551, Government Code.

(d) Four members of the board constitute a quorum.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 11.012. COMMISSIONER. (a) The commissioner of health and human services shall employ the commissioner in accordance with Section 531.0056, Government Code.

(b) Except as provided in Subsection (c), the commissioner must:

(1) have at least five years of experience in the administration of public health systems; and

(2) be a person licensed to practice medicine in this state.

(c) The commissioner of health and human services may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(d) If the commissioner of health and human services employs a person as commissioner who is not a physician, then the board shall designate a person licensed to practice medicine in this state as chief medical executive.

(e) The commissioner is the executive head of the department.

The commissioner shall perform the duties assigned by the board and state law, subject to the provisions of this subtitle.

(f) The board may supplement the salary of the commissioner with the approval of the governor. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 623, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 16, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.148, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1460, Sec. 2.17, eff. Sept. 1, 1999.

Sec. 11.013. SEPARATION OF AUTHORITY. (a) The board shall adopt policies and rules and shall govern the department.

(b) The board may delegate to the commissioner, or to the person acting as commissioner in the commissioner's absence, any power or duty imposed on the board by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules. The delegation must be written.

(c) The board shall:

(1) supervise the commissioner's administration and enforcement of the health laws of this state; and

(2) develop and implement policies that clearly separate the respective responsibilities of the board and the staff of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.014. INVESTIGATION OF DEPARTMENT. The board shall investigate the conduct of the work of the department. For that purpose, the board shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.015. PERSONNEL. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting. The commissioner may waive the posting requirements under circumstances outlined in department policies.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(c) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.016. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to assist the board in performing its duties.

(b) The board shall appoint an advisory committee in a manner that provides for:

(1) a balanced representation of persons with knowledge and interest in the committee's field of work;

(2) the inclusion on the committee of at least two members who represent the interests of the public; and

(3) a balanced representation of the geographic regions of the state.

(c) Repealed by Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999.

(d) Except as otherwise provided by law and contingent on the availability of department funds for this purpose, a member of an advisory committee appointed by the board is entitled to receive, with regard to travel expenses, the per diem and travel allowance authorized by the General Appropriations Act for state employees.

(e) The board shall specify each committee's purpose, powers, and duties, and shall require each committee to report to the board in the manner specified by the board concerning the committee's activities and the results of its work.

(f) The board shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the board or department. The board may appoint additional members to those advisory committees and may establish additional duties of those committees as the board determines to be necessary.

(g) The board shall adopt rules to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 2, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 11.0161. COMPENSATORY PER DIEM FOR ADVISORY COMMITTEE MEMBER. (a) Within the limit of available funds, a member of an advisory committee appointed to assist the board and the department is entitled to receive, if authorized by board rule, a compensatory

per diem, not to exceed the rate set in the General Appropriations Act, for each meeting the member attends.

(b) If a member has been appointed under the authority of a prior statute that provides no compensatory per diem or that provides for compensatory per diem in a specific amount, this section supersedes that statute.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 3, eff. Sept. 1, 1991.

Sec. 11.017. FINANCES. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(78), eff. June 17, 2011.

(b) The state auditor may audit the financial transactions of the board in accordance with Chapter 321, Government Code, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 4, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 785, Sec. 67, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. [1179](#)), Sec. 25(78), eff. June 17, 2011.

Sec. 11.018. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board shall prepare information of public interest describing the functions of the board and department and the board's and department's procedures by which complaints are filed with and resolved by the board and department. The department shall make the information available to the public and appropriate state agencies.

(c) The board by rule shall establish methods by which consumers and service recipients can be notified of the names, mailing addresses, and telephone numbers of the board and department for the purpose of directing complaints to the board and department. The board may provide for that notification:

(1) on each registration form, application, or written

contract for services of a person or entity regulated by the board or department;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the board or department; or

(3) in a bill for service provided by a person or entity regulated by the board or department.

(d) The department shall keep an information file about each complaint filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(e) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 1.07, eff. Sept. 1, 1999.

**CHAPTER 12. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH  
SUBCHAPTER A. POWERS AND DUTIES OF BOARD**

Sec. 12.0001. POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section

531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.18, eff. Sept. 1, 1999.

Sec. 12.001. GENERAL POWERS AND DUTIES. (a) The board has general supervision and control over all matters relating to the health of the citizens of this state.

(b) The board shall:

- (1) adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner and file a copy of those rules with the department; and
- (2) examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

(c) The board has all the powers, duties, and functions granted by law to:

- (1) the Texas Board of Health;
- (2) the state commissioner of health;
- (3) the Texas Department of Health;
- (4) the Texas Board of Health Resources; and
- (5) the Texas Department of Health Resources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.002. BOARD INVESTIGATIONS. (a) A member of the board may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for board investigation, including the determination of nuisances and the investigation of:

- (1) public water supplies;
- (2) sanitary conditions;
- (3) the existence of infection; or
- (4) any matter that requires the board to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the board in its investigations and in compelling compliance with this subchapter. If a witness summoned by the board is disobedient or disrespectful to



the board's lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by the board must be brought in the name of the state.

(b) The attorney general shall assign a special assistant to attend to the board's legal matters, and on the board's request shall furnish necessary assistance to the board relating to its legal requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.004. DEVELOPMENT OF PROPOSED RULES. (a) This section applies to the process by which the department develops proposed rules for the board's consideration before the proposed rules are published in the Texas Register and before the board, commissioner, or department complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. This section does not affect the duty of the board, commissioner, or department to comply with the rulemaking requirements of that law.

(b) The board shall require the department to establish a checklist of methods that, to the extent appropriate, the department will follow to obtain early in the rule development process the advice and opinions of the public and of persons who will be most affected by a proposed rule. The checklist must include methods for identifying persons who will be most affected and for soliciting at a minimum the advice and opinions of affected local health departments, of recipients and providers of affected services, and of advocates for affected recipients or providers.

(c) The checklist may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

(d) A rule adopted by the board may not be challenged on the grounds that the board, commissioner, or department did not comply with this section. If the department was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the

department shall state in writing to the board the reasons why the department was unable to do so.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 12.005. MEDICAL DIRECTOR: MEDICAID MANAGED CARE AND CHIPS PROGRAMS. (a) In addition to any other medical director employed by the department, the board shall require the department to employ a separate medical director whose duties consist of acting as the medical director for the children's health insurance program created under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and also as the medical director for the Medicaid managed care program, to the extent that those programs are administered by the department.

(b) The medical director shall be primarily responsible for implementing and maintaining policies and systems for the programs that relate to clinical and professional medical issues, including clinical oversight.

(c) The medical director must be a physician licensed to practice medicine in this state.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.08, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT**

Sec. 12.011. APPROPRIATIONS, GRANTS, AND DONATIONS. (a) To carry out its duties and functions, the department may apply for, contract for, receive, and spend an appropriation or grant from the state, the federal government, or any other public source, subject to any limitation or condition prescribed by legislative appropriation.

(b) The department may accept donations and contributions to be spent in the interest of public health and the enforcement of public health laws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.0111. LICENSING FEES. (a) This section applies in

relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.

(b) Notwithstanding other law, the department shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program.

(c) Notwithstanding other law, each regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department and that issues licenses shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to the department and to the regulatory board or agency in administering and enforcing the applicable licensing program.

(d) This section does not apply to:

- (1) a person regulated under Chapter 773; or
- (2) a license or registration under Chapter 401.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.42(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1061 (H.B. [2285](#)), Sec. 1, eff. September 1, 2007.

Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other law and except as provided by Subsection (b), the term of each license issued by the department, or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department, is two years. The department, regulatory board, or agency may provide for staggering the issuance and renewal of licenses.

(b) This section does not apply to:

- (1) a license issued for a youth camp under Chapter 141;
- (2) a food manager certificate issued under Subchapter G,

Chapter 438; or

- (3) a license or registration under Chapter 401.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.42(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 42 (H.B. 1064), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1061 (H.B. 2285), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.001, eff. September 1, 2009.

Sec. 12.0115. INTEGRATION OF HEALTH CARE DELIVERY PROGRAMS.

(a) In this section, "health care delivery programs" includes the department's primary health care services program, its program to improve maternal and infant health, its services for chronically ill and disabled children, any aspects of health care delivery under the state Medicaid program assigned to the department by law or by the Health and Human Services Commission, and the part of any other department program concerned with the department's responsibility for the delivery of health care services.

(b) The department shall integrate the functions of its different health care delivery programs to the maximum extent possible, including integrating the functions of health care delivery programs that are part of the state Medicaid program with functions of health care delivery programs that are not part of the state Medicaid program.

(c) At a minimum, the department's integration of the functions of its different health care delivery programs must include the integration within and across the programs of:

- (1) the development of health care policy;
- (2) the delivery of health care services, to the extent appropriate for the recipients of the health care services; and
- (3) to the extent possible, the administration of contracts with providers of health care services, particularly providers who concurrently provide health care services under more than one contract or program with the department.

(d) One of the primary goals of the department in integrating

the delivery of health care services for the benefit of recipients shall be providing for continuity of care for individuals and families, accomplished to the extent possible by providing an individual or family with a medical home that serves as the primary initial health care provider.

(e) One of the primary goals of the department in integrating the administration of its contracts with providers of health care services shall be designing an integrated contract administration system that reduces the administrative and paperwork burden on providers while still providing the department with the information it needs to effectively administer the contracts. The department's integration of contract administration must include:

(1) the integration of the initial procurement process within and across programs, at least in part by efficiently combining requests for bids or proposals within or across programs to the extent it reduces the administrative burden for providers;

(2) the establishment of uniform contract terms, including:

(A) contract terms that require information from providers, or that prescribe performance standards for providers, that could be made uniform within or across programs while remaining effective as contract terms;

(B) the establishment of a procedure under which a contractor or a person responding to a request for bids or proposals may supply the department with requested information whenever possible by referencing current and correct information previously supplied to and on file with the department; and

(C) contract terms regarding incentives for contractors to meet or exceed contract requirements;

(3) the integration of contract monitoring, particularly with regard to monitoring providers that deliver health services for the department under more than one contract or under more than one department program; and

(4) the integration of reimbursement methods:

(A) particularly for a provider that delivers health services for the department under more than one contract or under more than one department program; and

(B) including the application across programs of the most effective and efficient reimbursement technologies or methods that are available to the department under any of its programs.

(f) The department shall examine the extent to which the

department could integrate all or part of its health care delivery programs into a single delivery system.

(g) If a federal requirement that the federal government may waive restricts the department's integration efforts under this section, the department may seek a waiver of the requirement from the federal government. If the waiver affects a program for which another state agency is designated the single state agency for federal purposes, the department shall request the single state agency to seek the waiver.

(h) The department may not integrate health care delivery programs under this section in a way that affects the single state agency status of another state agency for federal purposes without obtaining the approval of the Health and Human Services Commission and any necessary federal approval.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.09, eff. Sept. 1, 1999.

Sec. 12.012. AWARDING CONTRACTS OR GRANTS AND SELECTING SERVICE PROVIDERS. (a) In awarding contracts or grants for services, or in selecting service providers under any program administered by the department, the department shall give preference to providers who can deliver appropriate services of similar quality in the most cost-effective manner.

(b) In awarding the contracts or grants or selecting the providers, the department may not discriminate among licensed health care providers who can provide the services under the authority of their licenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.0121. CONTRACTING FOR PROFESSIONAL SERVICES. (a) In this section, "professional services" means those services performed by an individual who is licensed, certified, registered, or otherwise authorized by the state and who acts within the scope of the individual's license, certification, registration, or other authorization in the practice of a health or allied health profession.

(b) The board by rule shall adopt a list of categories of

licensed, certified, registered, or otherwise authorized providers to whom the department may award a grant for professional services under this section or with whom the department may contract or otherwise engage to perform professional services under this section.

(c) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services selected on the basis of competitive proposals submitted for the grant, contract, or services to be performed. The department may also make the selection on the basis of:

(1) demonstrated competence and qualifications for the type of professional services to be performed; and

(2) whether the fees for the professional services to be performed are fair, reasonable, and consistent with and not higher than the usual and customary fees for the services to be performed and do not exceed any maximum provided by state law.

(d) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services without complying with Subsection (c) if the commissioner by order ratified by the board at its next regular meeting determines that an emergency exists that necessitates the use of different procedures. A grant, contract, or engagement under this subsection is effective only for the period specified by the commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 284, Sec. 1, eff. Sept. 1, 1991.

Sec. 12.0122. SALE OF LABORATORY SERVICES. (a) The department may enter into a contract for the sale and provision of laboratory services in accordance with this section.

(b) The department may enter into a contract with:

(1) a federal, state, or local governmental entity; or

(2) a freestanding public health clinic owned or controlled by a nonprofit organization.

(c) For purposes of Subsection (b)(1), a contract with a federal governmental entity does not include a contract relating to Medicare managed care services.

(d) The department by rule may establish charges for the sale of laboratory services.

(e) The department may enter into a contract with a party in or outside of this state.

(f) In this section, "laboratory services" means the activities performed by the laboratory established by the department. The term includes the provision of supplies and test materials and the performance of scientific procedures to analyze or assess specimens from any source, but does not include tissue and cytology specimens, except for pap smears for recipients under federally funded programs or genetic testing.

Added by Acts 1997, 75th Leg., ch. 647, Sec. 1, eff. June 11, 1997.  
Renumbered from Sec. 12.020 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(62), eff. Sept. 1, 1999.

Sec. 12.01221. MUTUAL AID AGREEMENT FOR NEWBORN SCREENING LABORATORY SERVICES. (a) In this section, "newborn screening laboratory services" means the performance of tests to analyze specimens collected as part of the newborn screenings performed under Subchapter B, Chapter 33.

(b) Notwithstanding Section 12.0122 or other law, the department may enter into a mutual aid agreement to provide newborn screening laboratory services to another state and to receive newborn screening laboratory services from another state in the event of an unexpected interruption of service, including an interruption caused by a disaster.

(c) Each mutual aid agreement under Subsection (b) shall include provisions:

(1) to address the confidentiality of the identity of the newborn child and the newborn child's family; and

(2) to ensure the return of blood specimens and related records to the state that received the newborn screening laboratory services.

Added by Acts 2009, 81st Leg., R.S., Ch. 109 (H.B. [1671](#)), Sec. 1, eff. September 1, 2009.

Text of section as added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10  
Sec. 12.0123. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS



BASED ON RISK. (a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under a contract with or otherwise on behalf of the department, performs one or more administrative services in relation to the department's operation of a part of the state Medicaid program, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The department shall contract with an independent auditor to perform independent external financial and performance audits of any Medicaid contractor used by the department in the department's operation of a part of the state Medicaid program. The department regularly shall review its Medicaid contracts and ensure that:

(1) the frequency and extent of audits of a Medicaid contractor under this section are based on the amount of risk to the state involved in the administrative services being performed by the contractor;

(2) audit procedures related to financial audits and performance audits are used consistently in audits under this section; and

(3) to the extent possible, audits under this section are completed in a timely manner.

(c) If another state agency succeeds to the department's operation of a part of the state Medicaid program for which the department used a Medicaid contractor, the successor agency shall comply with this section with regard to the Medicaid contractor, including the requirement to contract with an independent auditor to perform the external financial and performance audits required by this section.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.

Text of section as added by Acts 1999, 76th Leg., ch. 1447, Sec. 1 and by Acts 1999, 76th Leg., ch. 1460, Sec. 9.01

Sec. 12.0123. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS.

(a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under contract with or otherwise on behalf of the department, performs one or more administrative services in relation to the department's operation of a part of the state Medicaid program, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The department shall contract with an independent auditor to perform annual independent external financial and performance audits of any Medicaid contractor used by the department in the department's operation of a part of the state Medicaid program.

(c) The department shall ensure that audit procedures related to financial audits and performance audits are used consistently in audits under this section.

(d) An audit required by this section must be completed before the end of the fiscal year immediately following the fiscal year for which the audit is performed.

Added by Acts 1999, 76th Leg., ch. 1447, Sec. 1, eff. June 19, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 9.01, eff. Sept. 1, 1999.

Sec. 12.0124. ELECTRONIC TRANSACTIONS; STATE MEDICAID PROGRAM. The department or the department's successor in function in relation to the department's operation of a part of the state Medicaid program shall implement policies that encourage the use of electronic transactions. The policies shall require payment to Medicaid service providers by electronic funds transfer, including electronic remittance and status reports. The policies shall also include the establishment of incentives to submit claims electronically and of disincentives to submit claims on paper that are reasonably based on the higher administrative costs to process claims submitted on paper.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 12.0125. DRUG REBATES. (a) The department shall develop a voluntary drug manufacturer rebate program for drugs purchased by or on behalf of a client of the Kidney Health Care Program or the

Chronically Ill and Disabled Children's Services Program for which rebates are not available under the Medicaid drug manufacturer rebate program.

(b) The department shall consult with drug manufacturers to develop rebate amounts for the new voluntary rebate program. The average percentage savings from rebates in the new program may not be less than the average percentage savings from rebates in the Medicaid drug manufacturer rebate program.

(c) Amounts received by the department under the drug rebate program established under this section may be appropriated only for the Kidney Health Care Program or the Chronically Ill and Disabled Children's Services Program.

Added by Acts 1999, 76th Leg., ch. 669, Sec. 2, eff. June 18, 1999.

Sec. 12.0127. IMMIGRATION VISA WAIVERS FOR PHYSICIANS. (a) The department, in accordance with 8 U.S.C. Section 1182(e), as amended, under exceptions provided by 8 U.S.C. Section 1184(l), as amended, may request waiver of the foreign country residence requirement for a qualified alien physician who agrees to practice medicine in a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(b) The department may charge a fee to cover the costs incurred by the department in administering the visa waiver program established under this section.

Added by Acts 2003, 78th Leg., ch. 143, Sec. 1, eff. Sept. 1, 2003.

Sec. 12.0128. HEALTH ALERT NETWORK. The department shall include the Texas Association of Local Health Officials, the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism preparedness are available for that purpose.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 17, eff. June 18, 2005.

Sec. 12.013. DRIVING AND TRAFFIC POLICIES. (a) The department shall continuously study and investigate the medical aspects of:

- (1) the licensing of drivers;
- (2) the enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and
- (3) accident investigation, including examination for alcohol or drugs in the bodies of persons killed in traffic accidents.

(b) Based on the studies and investigations, the department periodically shall recommend to the Department of Public Safety appropriate policies, standards, and procedures relating to those medical aspects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.014. REGISTRY. (a) The department may establish a registry or system of registries for providers of health-related services who are not otherwise licensed, registered, or certified by any state agency, board, or commission.

(b) The board by rule may adopt reasonable registration fees to cover the costs of establishing and maintaining a registry and may adopt other rules as necessary to administer this section.

(c) A person seeking to register with the department must submit a request for registration on a form prescribed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 5, eff. Sept. 1, 1991.

Sec. 12.0145. INFORMATION ABOUT ENFORCEMENT ACTIONS. (a) The department shall publish and provide information in accordance with this section regarding each final enforcement action taken by the department, commissioner, or board against a person or facility regulated by the department in which any kind of sanction is imposed, including:

- (1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and
- (2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an

activity.

(b) Except to the extent that the information is specifically made confidential under other law, the department shall publish and provide the name, including any trade name, of the person or facility against which an enforcement action was taken, the violation that the person or facility was found to have committed, and the sanction imposed. The department shall publish and provide the information in a way that does not serve to identify a complainant.

(c) The department shall publish the information on its generally accessible Internet site. The department also shall provide the information by establishing a system under which members of the public can call toll-free numbers to obtain the information efficiently and with a minimum of delay. The department shall appropriately publicize the toll-free numbers.

(d) The department shall publish and provide the information promptly after the sanction has been imposed or, when applicable, promptly after the period during which the sanction is imposed has begun. The department by rule shall establish the length of time during which the required information will be published and provided under this section based on the department's determination regarding the types of services provided by regulated entities and the length of time for which information about a category of enforcement actions is useful to a member of the public.

(e) The department shall publish and provide the information using clear language that can be readily understood by a person with a high school education.

(f) If another law specifically requires that particular information subject to this section shall be published in another manner, the department shall comply with this section and with the other law.

(g) A determination that the department is not required to publish and provide information under this section does not affect a determination regarding whether the information is subject to required disclosure under the open records law, Chapter 552, Government Code. The department's determination regarding the length of the period during which information should continue to be published and provided under this section does not affect a determination regarding the period for which the information must be preserved under Chapter 441, Government Code, or under another law.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.11, eff. Sept. 1, 1999.

Sec. 12.0146. TRENDS IN ENFORCEMENT. The department shall publish annually an analysis of its enforcement actions taken under state law with regard to each profession, industry, or type of facility regulated by the department. The analysis for each regulatory area must show at a minimum the year-to-year trends in the number and types of enforcement actions taken by the department in its regulation of the profession, industry, or type of facility.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.11, eff. Sept. 1, 1999.

Sec. 12.015. INFORMATION ON COMMUNITY SERVICES. (a) If the department determines that a person is not eligible for a level of care in a nursing home, the department shall inform the person that community services might be available under the community care for the aged and disabled program administered by the Texas Department of Human Services.

(b) The department shall provide to the person a list of services available under the program and a telephone number to call for more information on the services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 6, eff. Sept. 1, 1991.

Sec. 12.016. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a department official or employee during a public hearing conducted by the department shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the department is required by law to be conducted at a certain location, the department shall determine the place within that location at which the hearing will be conducted. In making that determination, the department shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated

attendance.

(c) The department shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or board rule as though the application were originally submitted to the department on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the department at the time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.01, eff. Sept. 1, 1991.

Sec. 12.017. MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM.

(a) Except as provided by Section 533.047, the department shall develop for managed care organizations that serve Medicaid clients performance, operation, quality of care, marketing, and financial standards and standards relating to children's access to good quality health care services. In developing the standards, the department shall include measures to monitor and assess the performance of managed care organizations relating to the health status and outcome of care for Medicaid clients.

(b) In establishing standards under this section, the department shall ensure that:

(1) to the extent possible, each Medicaid client can receive good quality health care services in the client's local community;

(2) plans serving children have adequate capacity to provide pediatric care; and

(3) plans provide timely access and appropriate referrals

for specialty care.

Added by Acts 1995, 74th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(59), eff. Sept. 1, 1997.

Sec. 12.018. UNANNOUNCED INSPECTIONS. The department may make any inspection of a facility or program under the department's jurisdiction without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(50), eff. Sept. 1, 1997.

Sec. 12.019. GENETIC COUNSELING FEES. (a) The department may charge for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.

(b) The department shall use the fees for providing genetic counseling services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.116, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(51), eff. Sept. 1, 1997.

Sec. 12.020. PROTECTION AND USE OF INTELLECTUAL PROPERTY. (a) The department may:

(1) apply for, register, secure, hold, and protect under the laws of the United States, any state, or any nation:

(A) a patent for an invention or discovery of, or improvement to, any process, machine, manufacture, or composition of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression now known or later developed that can be perceived, reproduced, or otherwise communicated;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan, or any combination of those items, that has been adopted and used by the



department to identify goods or services and distinguish those goods or services from other goods or services; or

(D) other evidence of protection or exclusivity issued in or for intellectual property;

(2) enter into a contract with an individual or company for the sale, lease, marketing, or other distribution of intellectual property of the department;

(3) obtain under a contract entered into under Subdivision (2) a royalty, license right, or other appropriate means of securing appropriate compensation for the development or purchase of intellectual property of the department; and

(4) waive or reduce the amount of a fee, royalty, or other thing of monetary or nonmonetary value to be assessed by the department if the department determines that the waiver will:

(A) further the goals and missions of the department; and

(B) result in a net benefit to the state.

(b) Intellectual property for which the department has applied for or received a patent, copyright, trademark, or other evidence of protection or exclusivity is excepted from required disclosure under Chapter 552, Government Code.

(c) Money paid to the department under this section shall be deposited to the credit of the general revenue fund except as otherwise provided in Section 2054.115, Government Code.

(d) It is not a violation of Chapter 572, Government Code, or another law of this state for an employee of the department who conceives, creates, discovers, invents, or develops intellectual property to own or to be awarded any amount of equity interest or participation in the research, development, licensing, or exploitation of that intellectual property with the approval of the commissioner.

(e) The commissioner shall institute intellectual property policies for the department that establish minimum standards for:

(1) the public disclosure or availability of products, technology, and scientific information, including inventions, discoveries, trade secrets, and computer software;

(2) review by the department of products, technology, and scientific information, including consideration of ownership and appropriate legal protection;

(3) the licensing of products, technology, and scientific

information;

- (4) the identification of ownership and licensing responsibilities for each class of intellectual property; and
- (5) royalty participation by inventors and the department.

Added by Acts 1997, 75th Leg., ch. 143, Sec. 1, eff. May 19, 1997.

#### **SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER**

Sec. 12.021. ADMINISTRATION AND ENFORCEMENT DUTIES. The commissioner shall administer and enforce the health laws of this state under the board's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. FEES FOR PUBLIC HEALTH SERVICES**

Sec. 12.031. DEFINITION. In this subchapter, "public health services" means:

- (1) personal health promotion, maintenance, and treatment services;
- (2) infectious disease control and prevention services;
- (3) environmental and consumer health protection services;
- (4) laboratory services;
- (5) health facility architectural plan review;
- (6) public health planning, information, and statistical services;
- (7) public health education and information services; and
- (8) administration services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The board by rule may charge fees to a person who receives public health services from the department.

(b) The board by rule may require department contractors to charge fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this subsection and shall use the fee in accordance with the contract provisions.

(c) The amount of a fee charged for a public health service may not exceed the cost to the department of providing the service.

(d) The board may establish a fee schedule. In establishing the schedule, the board shall consider a person's ability to pay the entire amount of a fee.

(e) The board may not deny public health services to a person because of the person's inability to pay for the services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.033. DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA. (a) Except as otherwise provided by this section, the board by rule shall charge fees for the distribution and administration of vaccines and sera provided under:

- (1) Section 38.001, Education Code;
- (2) Section 42.043, Human Resources Code;
- (3) Chapter 826 (Rabies Control Act of 1981);
- (4) Chapter 81 (Communicable Disease Prevention and Control Act); and
- (5) Section 161.005.

(b) Except as otherwise provided by this section, the board by rule may require a department contractor to charge fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

(c) Provided the board finds that the monetary savings of this subsection are greater than any costs associated with administering it, the board by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the board shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee schedule conflicts with any federal law or regulation, the board shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect.

(d) The commissioner may waive the fee requirement for any type of vaccine or serum if the commissioner determines that:

- (1) a public health emergency exists; and
- (2) the vaccine or serum is needed to meet the emergency.

(e) The department may not deny an immunization to an

individual required to be immunized under a law specified by Subsection (a) because of the individual's inability to pay for the immunization. The department shall provide the immunization at a reduced charge or no charge according to the financial ability of the individual or a person with a legal obligation to support the individual to pay for the immunization. The department shall give priority to those persons least able to pay for immunization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 6.33, eff. Sept. 1, 1997.

Sec. 12.034. COLLECTION PROCEDURES. (a) The board shall establish procedures for the collection of fees for public health services. The procedures shall be used by the department and by those department contractors required by the board to charge fees.

(b) The fees may be collected either before the performance of the services or by billing after the services are performed.

(c) The department shall make a reasonable effort to collect fees billed after services are performed. However, the board by rule may waive the collection procedures if the administrative costs exceed the fees to be collected.

(d) If the board elects to require cash payments by program participants, the money received shall be deposited locally at the end of each day and retained by the department for not more than seven days. At the end of that time, the money shall be deposited in the state treasury.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.035. PUBLIC HEALTH SERVICES FEE FUND. (a) The department shall deposit all money collected for fees and charges collected under Sections 12.0122(d) and 12.032(a) in the state treasury to the credit of the Texas Department of Health public health services fee fund.

(b) The department shall maintain proper accounting records to allocate the fund among the state and federal programs generating the fees and administrative costs incurred in collecting the fees.

(c) The public health services fee fund is exempt from Section

403.095(b), Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 647, Sec. 2, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(11), eff. Sept. 1, 1999.

Sec. 12.036. SUBROGATION. (a) In furnishing public health services to a person, the department is subrogated to the person's right of recovery from:

- (1) personal insurance;
- (2) another person, for a personal injury caused by the other person's negligence or wrongdoing; or
- (3) any other source.

(b) The department's right of subrogation is limited to the cost of the services provided.

(c) The board or the board's designee may waive the department's right of subrogation in whole or in part if the board or the designee determines that:

- (1) enforcement of the right would tend to defeat the purpose of the department's program; or
- (2) the administrative expense of the enforcement would be greater than the expected recovery.

(d) The board may adopt rules for the enforcement of the department's right of subrogation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.037. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may modify, suspend, or terminate public health services to a person for nonpayment of billed services after notice to the affected person and an opportunity for a fair hearing.

(b) The board by rule shall prescribe the criteria for department action under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.038. RULES. The board may adopt rules necessary to

implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.039. CONSTRUCTION OF OTHER LAWS. (a) This subchapter does not repeal or modify a statute in effect on August 29, 1983, that fixes the amount, directs the disposition, prohibits the collection, or prescribes the basis for computing any fee or charge.

(b) This section does not restrict the determination or recomputing of a fee or charge in accordance with the prescribed basis for computing the fee or charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER E. GRANTS OR CONTRACTS FOR PURCHASES OF PUBLIC HEALTH SERVICES, EQUIPMENT, OR SUPPLIES**

Sec. 12.051. PROVISION OF FUNDS. The department may provide funds by grant or contract to a qualified person for the purchase of services, equipment, or supplies to be used to promote and maintain the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.052. REQUIREMENTS FOR EXPENDITURE OF CERTAIN FUNDS.

(a) The expenditure of funds received by local units of government from the department is governed by Chapter 783, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

(b) The expenditure of funds received by other state agencies from the department is governed by Subtitle D, Title 10, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

(c) The expenditure of funds received by any other qualified person from the department is governed by the grant or contract between the person and the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.15, eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1045, Sec. 3, eff. Sept. 1, 1997.

Sec. 12.053. INVENTORY REQUIREMENTS. All equipment and supplies which are purchased through a program, contract, or grant with the department by or for qualified entities, including but not limited to individuals, corporations, local units of government and other state agencies and that are used to promote and maintain public health are exempt from the statewide personal property accounting system administered by the comptroller of public accounts described in Subchapter L, Chapter 403, Government Code. The qualified entities shall maintain complete equipment and supply records. The department may request the return of any usable equipment or supplies purchased with funds provided by the department upon the termination of the program, contract, or grant.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 8, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 12.054. DISPOSITION OF CERTAIN DEPARTMENT PROPERTY. (a) This section applies only to property that is surplus or salvage property under Chapter 2175, Government Code, and that is:

- (1) exempt under Section 12.053 from the statewide personal property accounting system; or
- (2) lawfully in the possession of an emergency medical services provider or governmental entity as those terms are defined by Section 773.003.

(b) The department may negotiate directly with an emergency medical services provider or governmental entity to transfer title to property covered by this section for which the department determines that it holds title. The department and the provider or governmental entity may mutually agree upon the value of the property and shall take any action incident to the transaction that is required by federal law.

(c) The department shall initiate necessary procedures under Chapter 2175, Government Code, to dispose of surplus or salvage property for which the department does not transfer title under this section.

Added by Acts 1993, 73rd Leg., ch. 164, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(10), eff. Sept. 1, 1997.

Sec. 12.055. CERTAIN PROCUREMENTS MADE WITH DEPARTMENT FUNDS.

(a) A state agency or local unit of government that expends funds received from the department for the acquisition of goods and services may satisfy the requirements of Section 12.052 or of another state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with those funds in accordance with Section 12.056 or in accordance with:

- (1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;
- (2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or
- (3) this section, if the entity is not covered by Subdivision (1) or (2).

(b) A state agency or local unit of government under Subsection (a)(3) shall acquire goods or services by any procurement method approved by the Health and Human Services Commission that provides the best value to the state agency or local unit of government. The state agency or local unit of government shall document that the state agency or local unit of government considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the state agency or local unit of government may consider all relevant factors in determining the best value, including:

- (1) any installation costs;
- (2) the delivery terms;
- (3) the quality and reliability of the vendor's goods or services;
- (4) the extent to which the goods or services meet the state agency's or local unit of government's needs;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;
- (6) the impact on the ability of the state agency or local unit of government to comply with laws and rules relating to



historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the state agency or local unit of government of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the state agency's or local unit of government's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the state agency or local unit of government in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications.

(e) The state auditor or the department may audit the state agency's or local unit of government's acquisitions of goods and services under this section.

(f) The state agency or local unit of government may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 4, eff. Sept. 1, 1997.

Sec. 12.056. PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. The department may allow a state agency, local unit of government, or private entity that expends funds received by the department to purchase goods or services using those funds by participating in:

(1) a contract the department has made to purchase goods or services; or

(2) a group purchasing program established or designated by the department that offers discounts to providers of health services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 4, eff. Sept. 1, 1997.

#### **SUBCHAPTER F. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL ISSUES**

Sec. 12.071. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL ISSUES. The department shall establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 7, eff. Sept. 1, 1991.

#### **SUBCHAPTER H. MEDICAL ADVISORY BOARD**

Sec. 12.091. DEFINITIONS. In this subchapter:

- (1) "Medical standards division" means the Medical Standards on Motor Vehicle Operations Division of the department.
- (2) "Panel" means a panel of the medical advisory board.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.092. MEDICAL ADVISORY BOARD; BOARD MEMBERS. (a) The commissioner shall appoint the medical advisory board members from:

(1) persons licensed to practice medicine in this state, including physicians who are board certified in internal medicine, psychiatry, neurology, physical medicine, or ophthalmology and who are jointly recommended by the Texas Department of Health and the Texas Medical Association; and

(2) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

(b) The medical advisory board shall assist the Department of Public Safety of the State of Texas in determining whether:

(1) an applicant for a driver's license or a license holder is capable of safely operating a motor vehicle; or

(2) an applicant for or holder of a license to carry a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, or an applicant for or holder of a commission as a security officer under Chapter 1702, Occupations Code, is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.23, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 16, eff. June 14, 2013.

Sec. 12.093. ADMINISTRATION; RULES. (a) The medical advisory board is administratively attached to the medical standards division.

(b) The medical standards division:

- (1) shall provide administrative support for the medical advisory board and panels of the medical advisory board; and
- (2) may collect and maintain the individual medical records necessary for use by the medical advisory board and the panels under this section from a physician, hospital, or other health care provider.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.094. RULES RELATING TO MEDICAL ADVISORY BOARD MEMBERS.

(a) The board:

- (1) may adopt rules to govern the activities of the medical advisory board;
- (2) by rule may establish a reasonable fee to pay a member of the medical advisory board for the member's professional consultation services; and
- (3) if appropriate, may authorize per diem and travel allowances for each meeting a member attends, not to exceed the amounts authorized for state employees by the General Appropriations Act.

(b) The fee under Subsection (a)(2) may not be less than \$75 or more than \$150 for each meeting that the member attends.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.095. BOARD PANELS; POWERS AND DUTIES. (a) If the Department of Public Safety of the State of Texas requests an opinion or recommendation from the medical advisory board as to the ability of an applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, the commissioner or a person designated by the

commissioner shall convene a panel to consider the case or question submitted by that department.

(b) To take action as a panel, at least three members of the medical advisory board must be present.

(c) Each panel member shall prepare an individual independent written report for the Department of Public Safety of the State of Texas that states the member's opinion as to the ability of the applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, as appropriate. In the report the panel member may also make recommendations relating to that department's subsequent action.

(d) In its deliberations, a panel may examine any medical record or report that contains material that may be relevant to the ability of the applicant or license holder.

(e) The panel may require the applicant or license holder to undergo a medical or other examination at the applicant's or holder's expense. A person who conducts an examination under this subsection may be compelled to testify before the panel and in any subsequent proceedings under Subchapter H, Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, as applicable, concerning the person's observations and findings.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 22, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 11.22, eff. September 1, 2009.

Sec. 12.096. PHYSICIAN REPORT. (a) A physician licensed to practice medicine in this state may inform the Department of Public Safety of the State of Texas or the medical advisory board, orally or in writing, of the name, date of birth, and address of a patient older than 15 years of age whom the physician has diagnosed as having a disorder or disability specified in a rule of the Department of Public Safety of the State of Texas.

(b) The release of information under this section is an exception to the patient-physician privilege requirements imposed under Section 159.002, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.768, eff. Sept. 1, 2001.

Sec. 12.097. CONFIDENTIALITY REQUIREMENTS. (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board, a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter H, Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, the medical standards division may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 11.23, eff. September 1, 2009.

Sec. 12.098. LIABILITY. A member of the medical advisory board, a member of a panel, a person who makes an examination for or on the recommendation of the medical advisory board, or a physician who reports to the medical advisory board or a panel under Section 12.096 is not liable for a professional opinion, recommendation, or report made under this subchapter.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

#### **SUBCHAPTER I. TEXAS VOLUNTEER HEALTH CORPS**

Sec. 12.111. TEXAS VOLUNTEER HEALTH CORPS. (a) The department

shall establish the Texas Volunteer Health Corps to enhance community-based public health services.

(b) The Texas Volunteer Health Corps shall connect volunteers with residents of local communities to involve those residents in preventive health care, expand the role of those residents in making decisions about their own health, and build community support for public health.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.091 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.112. COORDINATORS. (a) The department may employ coordinators to recruit, train, and refer volunteers for service in local communities.

(b) A coordinator employed under this section may apply for grants from any public or private source for purposes of this subchapter.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.092 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.113. VOLUNTEERS. (a) Volunteers recruited under this subchapter may include students in high school or an institution of higher education, senior citizens, participants in the AFDC job opportunities and basic skills (JOBS) training program, VISTA and AmeriCorps volunteers, and volunteers from business and community networks.

(b) To build healthy local communities, Texas Volunteer Health Corps volunteers may promote health, expand clients' capacity for self-help, make clinic appointments, arrange transportation, and identify community resources and provide links to those resources.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.093 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.114. VITAL HEALTH CARE ISSUES. (a) The department may identify vital health care issues, including the use of tobacco and alcohol, end-of-life needs, health and safety issues on the Texas/Mexico border, family issues, oral health, violence, immunizations, homelessness, responsible adult and teen pregnancy, substance abuse, health promotion and education, and disease prevention.

(b) The Texas Volunteer Health Corps may address a vital health care issue if a local community identifies the issue as a priority.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.094 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.115. MENTORS. The department shall encourage health care professionals to volunteer as mentors in the Texas Volunteer Health Corps.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.095 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.116. INFORMATION. The department may provide public health information materials as needed by the Texas Volunteer Health Corps.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995.  
Renumbered from Health and Safety Code Sec. 12.096 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

#### **SUBCHAPTER J. TOBACCO SETTLEMENT PROCEEDS**

Sec. 12.131. DEFINITIONS. In this subchapter:

(1) "Account" has the meaning assigned by Section 403.1041, Government Code.

(2) "Advisory committee" means the tobacco settlement permanent trust account administration advisory committee.

(3) "Agreement" has the meaning assigned by Section 403.1041, Government Code.

(4) "Political subdivision" has the meaning assigned by Section 403.1041, Government Code.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.132. CERTIFICATION TO COMPTROLLER. The department shall collect information relating to the unreimbursed health care expenditures of each political subdivision and, based on that information and using the formula established in Paragraph 5.B. of the agreement, shall certify to the comptroller the percentage of each annual distribution to be paid from the account to each political subdivision.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.133. COLLECTION OF INFORMATION. (a) Each political subdivision shall submit to the department, in the manner and at the time required by the department, information that relates to the political subdivision's unreimbursed health care expenditures and is required by the department to make the certification under Section 12.132.

(b) Subject to the approval of the advisory committee, the board shall adopt rules governing the collection of information under Subsection (a). The rules may provide for regular audits of randomly selected political subdivisions and may govern the manner in which a political subdivision is selected for an audit and the selection of an auditor.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.134. DISPUTES RELATING TO INFORMATION COLLECTED. (a) Subject to the approval of the advisory committee, the board shall adopt rules under which a political subdivision or agency of this state may dispute information submitted by a political subdivision under Section 12.133.



(b) The rules may provide for:

(1) an audit of the political subdivision that submitted the disputed information;

(2) payment of the costs of the audit by the party to the dispute who does not prevail in the dispute;

(3) a deadline for filing a dispute for a particular year; and

(4) a reasonable monetary penalty to be applied to a subsequent annual distribution made to a political subdivision that is found to have overstated unreimbursed health care expenditures in the information submitted under Section 12.133.

(c) The monetary penalty applied under Subsection (b)(4) may not exceed 10 percent of the amount of the overstatement of unreimbursed health care costs.

(d) A dispute under this section is a contested case for purposes of Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.135. EFFECT OF DISPUTE. A dispute filed under department rules adopted under Section 12.134 does not affect the percentage of the annual distribution of the earnings from the account to be paid to the political subdivision for the year for which the information that is the subject of the dispute was submitted.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.136. ADJUSTMENT FOLLOWING AUDIT. (a) If the board finds, after an audit conducted under Section 12.133 or 12.134, that a political subdivision has overstated unreimbursed health care expenditures in the information submitted under Section 12.133 for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

(b) If a monetary penalty is applied under Section 12.134, the

department shall also reduce the political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

(c) If a political subdivision is assessed the cost of an audit under Section 12.134, the department shall report the amount assessed to the comptroller, and the comptroller may withhold that amount from the political subdivision's subsequent annual distribution. The comptroller may use the amount withheld to reimburse the general revenue fund for the cost of the audit.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.137. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT ADMINISTRATION ADVISORY COMMITTEE. (a) The tobacco settlement permanent trust account administration advisory committee shall advise the board on the implementation of the department's duties under this subchapter.

(b) The advisory committee is composed of 11 members appointed as follows:

(1) one member appointed by the board to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

(4) four members appointed by the Texas Conference of Urban Counties from nominations received from political subdivisions that in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account;

(5) one member appointed by the County Judges and Commissioners Association of Texas;

(6) one member appointed by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed by the South Texas County Judges and Commissioners Association; and

(8) one member appointed by the West Texas County Judges and Commissioners Association.

(b-1) An appointing entity under Subsection (b) is not a state association of counties.

(c) A commissioners court that sets the tax rate for a hospital district must approve any person appointed by the hospital district to serve on the advisory committee.

(d) The advisory committee shall elect the officers of the committee from among the members of the committee.

(e) The advisory committee may act only on the affirmative votes of eight members of the committee.

(f) Members of the advisory committee serve staggered six-year terms expiring on August 31 of each odd-numbered year.

(g) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(h) A member of the advisory committee may not receive compensation from the trust fund or the state for service on the advisory committee and may not be reimbursed from the trust fund or the state for travel expenses incurred while conducting the business of the advisory committee.

(i) The department shall provide administrative support and resources to the advisory committee as necessary for the advisory committee to perform the advisory committee's duties under this subchapter.

(j) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. [2120](#)), Sec. 9, eff. September 1, 2005.

Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the board relating to certification of a percentage of an annual distribution under Section 12.132 or collection of information under

Sections 12.132, 12.133, and 12.134 must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. If the advisory committee disapproves a proposed rule, the advisory committee shall provide the board the specific reasons that the rule was disapproved.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.139. ANNUAL REVIEW. The advisory committee shall annually:

(1) review the results of any audit conducted under this subchapter and the results of any dispute filed under Section 12.134; and

(2) review the rules adopted by the board under this subchapter and propose any amendments to the rules the advisory committee considers necessary.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

## **CHAPTER 13. HEALTH DEPARTMENT HOSPITALS AND RESPIRATORY FACILITIES**

### **SUBCHAPTER A. CARE AND TREATMENT IN HEALTH DEPARTMENT HOSPITALS**

Sec. 13.002. ADMISSION OF OTHER PATIENTS. (a) The board may admit to any hospital under its supervision a patient who:

(1) is eligible to receive patient services under a department program; and

(2) will benefit from hospitalization.

(b) Admission to a hospital as authorized under this section is subject to the availability of:

(1) appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients have been met; and

(2) trained medical personnel for the necessary medical care and treatment.

(c) The board may adopt rules and enter into contracts as necessary to implement this section.

(d) This section does not require the board or department to:

(1) admit a patient to a particular hospital;

- (2) guarantee the availability of space at any hospital;  
or  
(3) provide treatment for a particular medical need at any hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.003. SERVICES AT RIO GRANDE STATE CENTER. (a) The primary purpose of the Rio Grande State Center is to provide inpatient and outpatient services, either directly or by contract with one or more public or private health care providers or entities, to the residents of the Lower Rio Grande Valley.

- (b) The board may establish at the Rio Grande State Center:
- (1) cancer screening;
  - (2) diagnostic services;
  - (3) educational services;
  - (4) obstetrical services;
  - (5) gynecological services;
  - (6) other inpatient health care services; and
  - (7) outpatient health care services, including diagnostic, treatment, disease management, and supportive care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1106, Sec. 9, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 263, Sec. 2, eff. May 22, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 650 (H.B. 1850), Sec. 2, eff. June 19, 2009.

Sec. 13.004. TREATMENT OF CERTAIN MENTALLY ILL OR MENTALLY RETARDED PERSONS. (a) The Texas Department of Mental Health and Mental Retardation may transfer a mentally ill or mentally retarded person who is infected with tuberculosis to the Texas Center for Infectious Disease.

(b) The person may be transferred without that person's consent.

(c) The cost of maintaining and treating the person at the Texas Center for Infectious Disease shall be paid from appropriations to that hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 107, Sec. 2, eff. Sept. 1, 1995.

Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS. (a) The board shall fully develop essential services needed for the control of tuberculosis. To provide those services, the board may contract for the support, maintenance, care, and treatment of tuberculosis patients:

(1) admitted to facilities under the board's jurisdiction;

or

(2) otherwise subject to the board's jurisdiction.

(b) The board may contract with:

(1) municipal, county, or state hospitals;

(2) private physicians;

(3) licensed nursing homes and hospitals; and

(4) hospital districts.

(c) The board may contract for diagnostic and other services available in a community or region as necessary to prevent further spread of tuberculosis.

(d) A contract may not include the assignment of any lien accruing to the state.

(e) The board may establish and operate outpatient clinics as necessary to provide follow-up treatment on discharged patients. A person who receives treatment as an outpatient is financially liable in the manner provided for inpatients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.006. PURPOSE OF TUBERCULOSIS CONTROL PROGRAM. The primary objectives of the tuberculosis control program are:

(1) case-finding;

(2) inpatient and outpatient treatment; and

(3) the eventual eradication of tuberculosis.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.007. COLONEL H. WILLIAM "BILL" CARD, JR., OUTPATIENT CLINIC. The outpatient clinic operated by the South Texas Health

Care System in Harlingen, Texas, is named the Colonel H. William "Bill" Card, Jr., Outpatient Clinic in honor of Colonel H. William "Bill" Card, Jr.

Added by Acts 2009, 81st Leg., R.S., Ch. 1056 (H.B. 4642), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1118 (S.B. 1926), Sec. 1, eff. June 17, 2011.

#### **SUBCHAPTER B. TEXAS TUBERCULOSIS CODE**

Sec. 13.031. SHORT TITLE. This subchapter may be cited as the Texas Tuberculosis Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.032. PURPOSE. The purpose of this subchapter is to:

- (1) enable persons with tuberculosis to obtain needed care;
- (2) provide care and treatment for those persons; and
- (3) facilitate their hospitalization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.033. DEFINITIONS. In this subchapter:

(1) "Legally responsible person" means a parent, guardian, or spouse, or any person whom the laws of this state hold responsible for debts incurred as a result of the hospitalization or treatment of a patient.

(2) "Local health authority" means a practicing physician who acts as:

(A) a municipal or county health authority;

(B) a director of a local health department or public health district; or

(C) a regional director of a public health region.

(3) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(4) "Political subdivision" includes a county, municipality, or hospital district.

(5) "State chest hospital" means the Texas Center for Infectious Disease and the Rio Grande State Center.

(6) "Tuberculosis patient" means a person who has any form of tuberculosis in any part of the body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 107, Sec. 5, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 263, Sec. 3, eff. May 22, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 650 (H.B. 1850), Sec. 3, eff. June 19, 2009.

Sec. 13.034. BOARD DUTIES. (a) The board shall adopt rules and bylaws relating to:

- (1) the management of state chest hospitals;
- (2) the duties of officers and employees of those hospitals; and
- (3) the enforcement of necessary discipline and restraint of patients.

(b) The board shall supply each hospital with the necessary personnel for the operation and maintenance of the hospital.

(c) The board may:

- (1) prescribe the form and content of applications, certificates, records, and reports provided for under this subchapter;
- (2) require reports from the administrator of a state chest hospital relating to the admission, examination, diagnosis, release, or discharge of a patient;
- (3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted since the last visit;
- (4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient; and
- (5) adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

(d) The board may delegate a power or duty of the board to an employee. The delegation does not relieve the board from its responsibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 13.035. EMPLOYMENT OF HOSPITAL ADMINISTRATORS. (a) The department shall employ a qualified hospital administrator for each state chest hospital.

(b) A hospital administrator employed under this section is not required to be a licensed physician.

(c) The hospital administrator may delegate a power or duty of the administrator to an employee. The delegation does not relieve the hospital administrator from the responsibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.036. PATIENT ADMISSION; EXAMINATION CERTIFICATE. (a) A resident of this state who has tuberculosis may be admitted to a state chest hospital. A person who is not a resident of this state and who has tuberculosis may be admitted to a state chest hospital in accordance with Section 13.046.

(b) The hospital shall review applications for admission and admit or deny admission to applicants.

(c) An application for admission to a state chest hospital shall be accompanied by a certificate issued by a physician stating that the physician has thoroughly examined the applicant and that the applicant has tuberculosis. In the case of an applicant who is not a resident of this state, the certificate may be issued by a physician who holds a license to practice medicine in the state of residence of the applicant.

(d) In the case of an indigent applicant, the certificate may be issued by the local health authority.

(e) The department shall prescribe the form and content of the certificate.

(f) If the applicant has a communicable disease other than tuberculosis, the hospital administrator may delay the admission until the other disease is no longer contagious.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 107, Sec. 1, eff. Sept. 1, 2003.

Sec. 13.037. DETERMINATION OF RESIDENCY. (a) A person is a

resident of this state if the person:

(1) is physically present and living voluntarily in this state;

(2) intends to make a home in this state; and

(3) is not in this state temporarily.

(b) The intent to make a home in this state may be demonstrated by proof similar to or including:

(1) the possession of documentation, such as a Texas driver's license, motor vehicle registration, or voter registration certificate;

(2) the presence of personal effects at a specific abode in this state; or

(3) employment in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.038. CLASSIFICATION OF PATIENTS; LIEN. (a) A patient admitted to a state chest hospital is a public patient and classified as indigent, nonindigent, or nonresident.

(b) An indigent public patient is a person who:

(1) does not possess property of any kind;

(2) has no person who is legally responsible for the patient's support; and

(3) is unable to reimburse the state.

(c) A nonindigent public patient is a person who possesses property out of which the state may be reimbursed, or who has a person who is legally responsible for the patient's support.

(d) Except as provided by Section 13.040, the state shall support and maintain an indigent or nonindigent public patient at state expense but is entitled to reimbursement for a nonindigent public patient's support.

(e) The state's claim for nonindigent support and maintenance constitutes a lien against the property of the patient or the legally responsible person who is financially able to contribute.

(f) A nonresident public patient is a person who is admitted in accordance with an interstate agreement under Section 13.046.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 107, Sec. 2, eff. Sept. 1, 2003.

Sec. 13.039. COLLECTION OF STATE'S CLAIM. (a) A state claim for patient support and maintenance may be collected through an action brought against the patient or the person legally responsible for the patient. The action shall be brought in the county from which the patient was sent and shall be brought in the name of the state by the county or district attorney of that county or by the attorney general.

(b) The action shall be brought on the written request of the state chest hospital administrator, accompanied by a certificate as to the amount owed to the state. In any action, the certificate is sufficient evidence of the amount owed to the state for the support of that patient.

(c) On receipt of the request, the attorney shall bring and conduct the suit and is entitled to a commission of 10 percent of the amount collected. All money collected under this section, less the amount of the commission, shall be paid by the attorney to the hospital administrator, who shall receive the amount and give a receipt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.040. EFFECT OF INDIGENT HEALTH CARE AND TREATMENT ACT. If an indigent or nonindigent public patient is eligible for health care assistance from a county hospital or public hospital under Chapter 61 (Indigent Health Care and Treatment Act), the state is entitled to reimbursement from that hospital for the treatment and support of the patient to the extent prescribed by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.041. RETURN OF CERTAIN NONRESIDENTS; RECIPROCAL AGREEMENTS. (a) The board may:

(1) return a nonresident patient admitted to a state chest hospital to the proper agency of the state of the patient's residence; and

(2) permit the return of a resident of this state who has been admitted to a tuberculosis hospital in another state.

(b) The state that is returning a patient shall pay the expenses of the return.

(c) The board may enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of nonresident patients admitted to state chest hospitals in other states.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A state chest hospital may not discriminate against a patient.

(b) Each patient is entitled to equal facilities, attention, and treatment. However, a state chest hospital may provide different care and treatment of patients because of differences in the condition of the individual patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.043. GRATUITIES PROHIBITED. (a) A patient in a state chest hospital may not offer an officer, agent, or employee of the hospital a tip, payment, or reward of any kind.

(b) A patient who violates this section may be expelled from the hospital. An employee who accepts a tip, payment, or reward of any kind from a patient may be discharged.

(c) The board shall strictly enforce this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.044. PRIVATE ACCOMMODATIONS. (a) On the request of any charitable organization in this state, the board may permit the erection, furnishing, and maintenance by the charitable organization of accommodations on the grounds of a state chest hospital for persons who have tuberculosis and who are:

(1) members of the charitable organization;

(2) members of the families of persons who are members of the charitable organization; or

(3) surviving spouses or minor children of deceased persons who are members of the charitable organization.

(b) The accommodations shall be reserved for the preferential use of persons described by Subsection (a).

(c) The state may not incur any expense in the erection, furnishing, and maintenance of the accommodations. The charitable organization that enters a patient under this section may be required to pay the pro rata part of the maintenance costs of that patient that is found to be just and equitable, pending the next legislative appropriation for the maintenance of state chest hospitals. Any part of the accommodations not used by persons described by Subsection (a) may be used, at the discretion of the hospital administrator, by other patients in the hospital without charge to the state.

(d) The officers or a board or committee of the charitable organization and the board must enter into a written agreement relating to the location, construction, style, and character, and terms of existence of buildings, and other questions arising in connection with the grant of permission to erect and maintain private accommodations. The written agreement must be recorded in the minutes of the board.

(e) Except for the preferential right to occupy vacant accommodations erected by the person's charitable organization, a person described by Subsection (a) shall be classified in the same manner as other state chest hospital patients and shall be admitted, maintained, cared for, and treated in those hospitals in the same manner and under the same conditions and rules that apply to other patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.045. DONATION OF LAND BY COUNTY. (a) A county may donate and convey land to the state in consideration of the establishment of a state chest hospital by the board.

(b) The commissioners court of the county may determine the desirability, manner, and form of the donation and conveyance.

(c) This section does not authorize the commissioners court of a county to convey land donated or granted for educational purposes to the county in any manner other than that directed by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The department may enter into an agreement with an agency of another

state responsible for the care of residents of that state who have tuberculosis under which:

(1) residents of the other state who have tuberculosis may be admitted to a state chest hospital, subject to the availability of appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients who are residents of this state have been met; and

(2) the other state is responsible for paying all costs of the hospitalization and treatment of patients admitted under the agreement.

(b) Section 13.041 does not apply to the return of a nonresident patient admitted to a state chest hospital in accordance with an agreement entered into under this section. The return of that patient to the state of residence is governed by the agreement.

Added by Acts 2003, 78th Leg., ch. 107, Sec. 3, eff. Sept. 1, 2003.

**SUBTITLE B. HEALTH PROGRAMS**  
**CHAPTER 31. PRIMARY HEALTH CARE**

Sec. 31.001. SHORT TITLE. This chapter may be cited as the Texas Primary Health Care Services Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.002. DEFINITIONS. (a) In this chapter:

(1) "Facility" includes a hospital, ambulatory surgical center, public health clinic, birthing center, outpatient clinic, and community health center.

(2) "Medical transportation" means transportation services that are required to obtain appropriate and timely primary health care services for eligible individuals.

(3) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for payment of the costs of primary health care services, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or XIX of the Social Security Act (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law, or by an ordinance or rule of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(4) "Primary health care services" includes:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

(F) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services;

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

(5) "Program" means the primary health care services program authorized by this chapter.

(6) "Provider" means a person who, through a grant or a contract with the department, provides primary health care services that are purchased by the department for the purposes of this chapter.

(7) "Support" means the contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.003. PRIMARY HEALTH CARE SERVICES PROGRAM. (a) The board may establish a program in the department to provide primary health care services to eligible individuals.

(b) If the program is established, the board shall adopt rules relating to:

(1) the type, amount, and duration of services to be provided under this chapter; and

(2) the determination by the department of the services needed in each service area.

(c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services provided, geographic areas covered, or classes of individuals eligible for services.

(d) The board shall adopt rules under Subsection (c) relating to the geographic areas covered and the classes of individuals eligible for services according to a statewide determination of the need for services.

(e) The board shall adopt rules under Subsection (c) relating to the types of services provided according to the set of service priorities established under this subsection. Initial service priorities shall focus on the funding of, provision of, and access to:

- (1) diagnosis and treatment;
- (2) emergency services;
- (3) family planning services;
- (4) preventive health services, including immunizations;



(5) health education; and

(6) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services.

(f) Except as limited by this section, the department shall develop an integrated framework for the equitable provision of services throughout the state and shall use existing public and private health, transportation, and education resources.

(g) The board should require that the services provided under this chapter be reserved to the greatest extent possible for low-income individuals who are not eligible for similar services through any other publicly funded program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.004. ADMINISTRATION. (a) The board shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with board rules.

(b) With the advice and assistance of the commissioner and the department, the board by rule shall:

(1) establish the administrative structure of the program;

(2) establish a plan of areawide administration to provide authorized services;

(3) designate, if possible, local public and private resources as providers; and

(4) prevent duplication by coordinating authorized primary health care services with existing federal, state, and local programs.

(c) The department shall prescribe the design and content of all necessary forms used in the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.005. PROVISION OF PROGRAM SERVICES BY DEPARTMENT. (a) The board shall adopt rules relating to the department's determination of whether program services are to be provided through a network of approved providers, directly by the department, or by a combination of the department and approved providers as prescribed by this section.

(b) The department shall provide services only as prescribed by

board rule.

(c) The department may provide primary health care services directly to eligible individuals to the extent that the board determines that existing private or public providers or other resources in the service area are unavailable or unable to provide those services. In making that determination, the department shall:

(1) initially determine the proposed need for services in the service area;

(2) notify existing private and public providers and other resources in the service area of the department's initial determination of need and the services the department proposes to provide directly to eligible individuals;

(3) provide existing private and public providers and other resources in the service area a reasonable opportunity to comment on the department's initial determination of need and the availability and ability of existing private or public providers or other resources in the service area to satisfy the need;

(4) provide existing private and public providers and other resources in the service area a reasonable opportunity to obtain approval as providers under the program; and

(5) eliminate, reduce, or otherwise modify the proposed scope or type of services the department proposes to provide directly to the extent that those services may be provided by existing private or public providers or other resources in the service area that meet the board's criteria for approval as providers.

(d) The department shall maintain a continuing review of the services it provides directly to the eligible individuals who participate in the program. At least annually, the department shall review and determine the continued need for the services it provides directly in each service area, in accordance with the methods and procedures used to make the initial determination as prescribed by this section.

(e) If after a review the board determines that a private or public provider or other resource is available to provide services and has been approved as a provider, the department shall, immediately after approving the provider, eliminate, reduce, or modify the scope and type of services the department provides directly to the extent the private or public provider or other resource is available and able to provide the service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.006. SERVICE PROVIDERS. (a) The board shall adopt rules relating to:

(1) the selection and expedited selection of providers, including physicians, registered nurses, and facilities; and

(2) the denial, modification, suspension, and termination of program participation.

(b) The department shall select and approve providers to participate in the program according to the criteria and following the procedures prescribed by board rules.

(c) The department shall pay only for program services provided by approved providers, except in an emergency.

(d) The board may not adopt facility approval criteria that discriminate against a facility solely because it is operated for profit.

(e) The department may not exclude a provider solely because the provider receives federal funds if the federal funds are inadequate to provide the services authorized by this chapter to all eligible individuals seeking services from that provider.

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(g) The department shall render the final administrative decision in a due process hearing to modify, suspend, or terminate the approval of a provider.

(h) The department may not terminate a grant or contract while a due process hearing is pending under this section. The department may withhold payments while the hearing is pending but shall pay the withheld payments and resume grant or contract payments if the final determination is in favor of the provider.

(i) The notice and hearing required by this section do not apply if a grant or contract:

(1) is canceled by the department because of exhaustion of funds or because insufficient funds require the board to adopt service priorities; or

(2) expires according to its terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(65), eff. Sept. 1, 1995.

Sec. 31.007. APPLICATION FOR SERVICES. (a) The board shall adopt rules relating to application procedures for admission to the program.

(b) An applicant must complete or cause to be completed an application form prescribed by the department.

(c) The application form must be accompanied by:

(1) a statement by the applicant, or by the person with a legal obligation to provide for the applicant's support, that the applicant or person is financially unable to pay for all or part of the cost of the necessary services; and

(2) any other assurances from the applicant or any documentary evidence required by the board that is necessary to support the applicant's eligibility.

(d) Except as permitted by program rules, the department may not provide services or authorize payment for services delivered to an individual before the eligibility date assigned to the individual by the department.

(e) The department shall determine or cause to be determined the eligibility date in accordance with board rules. The date may not be later than the date on which the individual submits a properly completed application form and all supporting documents required by this chapter or board rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.008. ELIGIBILITY FOR SERVICES. (a) The board shall adopt rules relating to eligibility criteria for an individual to receive services under the program, including health, medical, and financial criteria. The department shall determine or cause to be determined an applicant's eligibility in accordance with this chapter and board rules.

(b) Except as modified by other rules adopted under this chapter, the board by rule shall provide that to be eligible to receive services, the individual must be a resident of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.009. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department for cause may deny an application for services after notice to the applicant and an opportunity for a fair hearing.

(b) The department may modify, suspend, or terminate services to an individual eligible for or receiving services after notice to the individual and an opportunity for a fair hearing.

(c) The board by rule shall provide criteria for action by the department under this section.

(d) Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of services. The department shall conduct hearings in accordance with the board's due process hearing rules.

(e) The department shall render the final administrative decision in a due process hearing to deny, modify, suspend, or terminate the receipt of services.

(f) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the board to establish service priorities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(65), eff. Sept. 1, 1995.

Sec. 31.010. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require an individual receiving services under this chapter, or the person with a legal obligation to support the individual, to pay for or reimburse the department for that part of the cost of the services that the individual or person is financially able to pay.

(b) Except as provided by board rules, an individual is not eligible to receive services under this chapter to the extent that the individual, or a person with a legal obligation to support the individual, is eligible for some other benefit that would pay for all or part of the services.

(c) When an application is made under this chapter or when services are received, the individual applying for or receiving

services shall inform the department of any other benefit to which the individual, or a person with a legal obligation to support the individual, may be entitled.

(d) An individual who has received services that are covered by some other benefit, or a person with a legal obligation to support that individual, shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The commissioner may waive enforcement of Subsections (b)-(d) of this section as prescribed by board rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.011. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 31.010 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the services to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.012. FEES. (a) The board may charge fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

(b) The board shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.013. FUNDING. (a) Except as provided by this chapter or by other law, the board may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

(b) The department is not required to provide primary health care services unless funds are appropriated to the department to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.014. CONTRACTS. The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.015. RECORDS AND REVIEW. (a) The department shall require each provider receiving reimbursement under this chapter to maintain records and information for each applicant for or recipient of services.

(b) The board shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by program providers and shall annually prepare a report for submission to the governor and the legislature relating to the status of the program. The department shall make the report available to the public.

(d) The report required under Subsection (c) must include:

(1) the number of individuals receiving care under this chapter;

(2) the total cost of the program, including a delineation of the total administrative costs and the total cost for each service authorized under Section 31.003(e);

(3) the average cost per recipient of services;

(4) the number of individuals who received services in each public health region; and

(5) any other information required by the board.

(e) In computing the number of individuals to be reported under Subsection (d)(1), the department shall ensure that no individual is counted more than once.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.016. PROGRAM PLANS. (a) The department shall have a long-range plan, covering at least six years, that includes at least the following elements:

(1) quantifiable indicators of effort and success;

(2) identification of priority client population and the minimum types of services necessary for that population;

(3) a description of the appropriate use of providers, including the role of providers, and considering the type, location, and specialization of the providers;

(4) criteria for phasing out unnecessary services;

(5) a comprehensive assessment of needs and inventory of resources; and

(6) coordination of administration and service delivery with federal, state, and local public and private programs that provide similar services.

(b) The department shall revise the plan by January 1 of each even-numbered year.

(c) The department shall develop a short-range plan that is derived from the long-range plan and that identifies and projects the costs relating to implementing the short-range plan.

(d) As part of the department's budget preparation process, the department shall biennially assess its achievement of the goals identified in each plan. The department's biennial budget shall be made according to the results of the assessment and the short-range plan. The department shall make its requests for new program funding and for continued funding according to demonstrated need.

(e) The department shall use the information collected under Section 31.015 to develop the long-range and short-range plans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.017. FEDERALLY QUALIFIED HEALTH CENTERS. The



department may make grants to establish new or expand existing facilities and to support new or expanded services at facilities that can qualify as federally qualified health centers, as defined by 42 U.S.C. Section 1396d(1)(2)(B), in this state, including:

- (1) planning grants;
- (2) development grants;
- (3) capital improvement grants; and
- (4) grants for transitional operating support.

Added by Acts 2003, 78th Leg., ch. 860, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 127 (S.B. 526), Sec. 1, eff. August 31, 2009.

## **CHAPTER 32. MATERNAL AND INFANT HEALTH IMPROVEMENT**

### **SUBCHAPTER A. PROGRAM FOR WOMEN AND CHILDREN**

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Maternal and Infant Health Improvement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.002. DEFINITIONS. (a) In this chapter:

- (1) "Adolescent" means an individual younger than 18 years of age.
- (2) "Ancillary services" means services necessary to obtain timely, effective, and appropriate maternal and infant health improvement services, and includes prescription drugs, medical social services, transportation, health promotion services, and laboratory services.
- (3) "Facility" includes a hospital, public health clinic, birthing center, outpatient clinic, or community health center.
- (4) "Infant care" means maternal and infant health improvement services and ancillary services appropriate for an individual from birth to 12 months of age.
- (5) "Intrapartum care" means maternal and infant health improvement services and ancillary services appropriate for a woman, fetus, or infant during childbirth.
- (6) "Maternal and infant health improvement services" means services necessary to assure quality health care for women and

children.

(7) "Medical assistance program" means the program administered by the single state agency under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.).

(8) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for payment of the costs of maternal and infant health improvement services, ancillary services, educational services, or transportation services, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.);

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law, other than Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or by an ordinance or rule of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(9) "Perinatal care" means maternal and infant health improvement services and ancillary services that are appropriate for women and infants during the perinatal period, which begins before conception and ends on the infant's first birthday.

(10) "Postpartum care" means maternal and infant health improvement services and ancillary services appropriate for a woman following a pregnancy.

(11) "Preconceptional care" means maternal and infant health improvement services and ancillary services appropriate for a woman before conception that are provided with the intent of planning and reducing health risks that might adversely affect her

pregnancies.

(12) "Prenatal care" means maternal and infant health improvement services and ancillary services that are appropriate for a pregnant woman and the fetus during the period beginning on the date of conception and ending on the commencement of labor.

(13) "Program" means the maternal and infant health improvement services program authorized by this chapter.

(14) "Provider" means a person who, through a grant or a contract with the department or through other means approved by the department, provides maternal and infant health improvement services and ancillary services that are purchased by the department for the purposes of this chapter.

(15) "Support" means the contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 2, eff. Sept. 1, 1995.

Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT SERVICES PROGRAM. (a) The board may establish a maternal and infant health improvement services program in the department to provide comprehensive maternal and infant health improvement services and ancillary services to eligible women and infants.

(b) If the program is established, the board shall adopt rules relating to:

(1) the type, amount, and duration of services to be provided under this chapter; and

(2) the determination by the department of the services needed in each service area.

(c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services

provided, geographic areas covered, or classes of individuals eligible for services.

(d) The board shall adopt the rules according to a statewide determination of the need for services.

(e) In structuring the program and adopting rules, the department and board shall attempt to maximize the amount of federal matching funds available for maternal and infant health improvement services while continuing to serve targeted populations.

(f) If necessary, the board by rule may coordinate services and other parts of the program with the medical assistance program. However, the board may not adopt rules relating to the services under either program that would:

(1) cause the program established under this chapter not to conform with federal law to the extent that federal matching funds would not be available; or

(2) affect the status of the single state agency to administer the medical assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 3, eff. Sept. 1, 1995.

Sec. 32.005. ABORTION SERVICES RESTRICTED. Notwithstanding any other provision of this chapter, funds administered under this chapter may not be used to provide abortion services unless the mother's life is in danger.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.006. ADMINISTRATION. (a) The board shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with board rules.

(b) The department shall prescribe the design and content of all necessary forms used in the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.011. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny, modify,

suspend, or terminate services to an individual eligible for or receiving services after notice to the individual and an opportunity for a hearing.

(b) The board by rule shall provide criteria for action by the department under this section.

(c) Chapter 2001, Government Code, does not apply to the granting, denial, modification, suspension, or termination of services. The department shall conduct hearings in accordance with the board's due process hearing rules.

(d) The department shall render the final administrative decision in a due process hearing to deny, modify, suspend, or terminate the receipt of services.

(e) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the board to establish service priorities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(65), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 124, Sec. 4, eff. Sept. 1, 1995.

Sec. 32.012. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require an individual receiving services under this chapter, or the person with a legal obligation to support the individual, to pay for or reimburse the department for that part of the cost of the services that the individual or person is financially able to pay.

(b) Except as provided by board rules, an individual is not eligible to receive services under this chapter to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(c) When a determination of eligibility to receive maternal and infant health improvement services is made under this chapter or when the services are received, the individual requesting or receiving services shall inform the department of any other benefit to which the individual or a person with a legal obligation to support the individual may be entitled.

(d) An individual who has received services that are covered by

some other benefit, or any other person with a legal obligation to support that individual, shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The commissioner may waive enforcement of Subsections (b)-(d) of this section as prescribed by board rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 5, eff. Sept. 1, 1995.

Sec. 32.013. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 32.012 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the services to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.014. FEES. (a) Except as prohibited by federal law or regulation, the board may charge fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

(b) The board shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.015. FUNDING. (a) Except as provided by this chapter

or by other law, the board may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

(b) Notwithstanding other law, the department's authority to spend funds appropriated for the program established by this chapter is not affected by the amount of federal funds the department receives.

(c) The department is not required to provide maternal and infant health improvement services unless funds are appropriated to the department to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 6, eff. Sept. 1, 1995.

Sec. 32.016. CONTRACTS. The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.017. RECORDS. (a) The department shall require each provider receiving reimbursement under this chapter to maintain records and information for each applicant for or recipient of services.

(b) The board shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative reporting of data.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 6, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(1), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(79), eff. June 17, 2011.

Sec. 32.018. PROGRAM PLANS. (a) The department shall have a long-range plan covering at least six years that includes at least the following elements:

- (1) quantifiable indicators of effort and success;
- (2) identification of priority client population and the minimum types of services necessary for that population;
- (3) a description of the appropriate use of providers, including the role of providers and considering the type, location, and specialization of the providers;
- (4) criteria for phasing out unnecessary services;
- (5) a comprehensive assessment of needs and inventory of resources; and
- (6) coordination of administration and service provision with federal, state, and local public and private programs that provide similar services.

(b) The department shall revise the plan by January 1 of each even-numbered year.

(c) The department shall develop a short-range plan that is derived from the long-range plan and that identifies and projects the costs relating to implementing the short-range plan.

(d) As part of the department's budget preparation process, the department shall biennially assess its achievement of the goals identified in each plan. The department's biennial budget shall be made according to the results of the assessment and the short-range plan. The department shall make its requests for new program funding and for continued funding according to demonstrated need.

(e) The department shall use the information collected under Section 32.017 to develop the long-range and short-range plans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS AND



CHILDREN PROGRAM. (a) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants and Children shall each month provide the clinical and nutritional services supported by that program during extended hours, as defined by the department.

(b) Each agency, organization, or other entity that contracts with the program to provide clinical or nutritional services shall include in its annual plan submitted to the department a plan to expand client access to services through extended hours, the schedule for each site that provides services, and the reasons for each site's schedule. An agency, organization, or other entity that contracts with the program is not required to offer extended hours at each of its service sites.

(c) The department shall adopt guidelines for extended hours and waivers from the requirement of Subsection (a).

(d) To obtain a waiver, an agency, organization, or other entity shall submit a written justification to the department explaining the extraordinary circumstances involved and identifying the time frame needed for their resolution.

(e) The department may not grant a waiver to an agency, organization, or other entity for a period of more than two years.

(f) If an agency, organization, or other entity required by this section to maintain extended hours provides other maternal and child health services, that entity shall also make those services available during the extended hours.

Added by Acts 1993, 73rd Leg., ch. 328, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.0211. WOMEN, INFANTS AND CHILDREN PROGRAM OUTREACH CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT. (a) The attorney general shall:

(1) subject to Subsections (b) and (c), develop and periodically update a publication that:

(A) describes the importance and long-term positive effects on children of a father's involvement during a mother's pregnancy; and

(B) provides guidance to prospective fathers on the

positive actions that they can take to support the pregnant mother during pregnancy and the effect those actions have on pregnancy outcomes; and

(2) make the publication described by Subdivision (1) available to any agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants and Children and on the attorney general's Internet website in a format that allows the public to download and print the publication.

(b) The publication developed by the attorney general under Subsection (a) must include:

(1) information regarding the steps that unmarried parents must take if the parents want to establish legal paternity and the benefits of paternity establishment for children;

(2) a worksheet to help fathers identify personal risk behaviors, including smoking, substance abuse, and unemployment;

(3) information regarding how a father's personal risk behaviors may affect the father's child and a guide to resources that are available to the father to assist in making necessary lifestyle changes;

(4) information for fathers about the mother's prenatal health, including the emotional and physical changes a mother will experience throughout pregnancy, the mother's nutritional needs, and an explanation of how the father may help the mother meet those needs;

(5) an explanation of prenatal health care visits, including an explanation of what they are and what to expect, and the practical ways a father may support the mother throughout pregnancy;

(6) information regarding a child's prenatal health, including the child's developmental stages, the importance of attending prenatal health care visits, the practical ways a father may contribute to healthy baby outcomes, and actions the father may take to prepare for the birth of a child;

(7) an explanation regarding prenatal tests, including an explanation of what the tests are and what tests to expect;

(8) basic infant care information, including:

(A) information regarding the basics of dressing, diapering, bathing, consoling, and stimulating an infant;

(B) health and safety issues, including issues relating to nutritional information, sleep needs and expectations, baby-proofing a home, and what to expect at the first well-child visits;

and

(C) information on bonding and attachment and how each relates to an infant's development;

(9) healthy relationship and coparenting information, including communication strategies, conflict resolution strategies, and problem-solving techniques for coparenting;

(10) worksheets, activities, and exercises to aid fathers and the couple in exploring the following topics:

(A) personal ideas about fatherhood and the role of the father in the family system;

(B) the immediate and long-term benefits of father involvement specific to their family; and

(C) perceived barriers to father involvement and strategies for overcoming those barriers; and

(11) activities and projects for fathers that increase the fathers' understanding of the stages of child developmental and health and safety issues.

(c) In developing the publication required by Subsection (a), the attorney general shall consult with:

(1) the department as the state agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children and this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et seq.); and

(2) the Texas Council on Family Violence.

(d) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants and Children shall make the publication described by Subsection (a) available to each client receiving clinical or nutritional services under the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 241 (H.B. 824), Sec. 1, eff. June 17, 2011.

#### **SUBCHAPTER B. PERINATAL HEALTH CARE SYSTEM**

Sec. 32.041. LEGISLATIVE FINDINGS. (a) The legislature finds that the perinatal period beginning before conception and continuing through the first year of life poses unique challenges for the health care system. The development of a coordinated, cooperative system of

perinatal health care within a geographic area will reduce unnecessary mortality and morbidity for women and infants.

(b) In order to improve the health of women and infants, it is necessary to promote health education, to provide assurance of reasonable access to safe and appropriate perinatal services, and to improve the quality of perinatal care by encouraging optimal use of health care personnel.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.042. DUTIES OF BOARD; RULES. (a) The board by rule shall adopt:

(1) minimum standards and objectives to implement voluntary perinatal health care systems; and

(2) policies for health promotion and education, risk assessment, access to care, and perinatal system structure, including the transfer and transportation of pregnant women and infants.

(b) The rules must:

(1) reflect all geographic areas of the state, considering time and distance;

(2) provide specific requirements for appropriate care of perinatal patients; and

(3) facilitate coordination among all perinatal service providers and health care facilities in the delivery area.

(c) The rules must include:

(1) risk reduction guidelines for preconceptional, prenatal, intrapartum, postpartum, and infant care, including guidelines for the transfer and transportation of perinatal patients;

(2) criteria for determining geographic boundaries of perinatal health care systems;

(3) minimum requirements of health promotion and education, risk assessment, access to care, and coordination of services that must be present in a perinatal health care system;

(4) minimum requirements for resources and equipment needed by a health care facility to treat perinatal patients;

(5) standards for the availability and qualifications of the health care personnel treating perinatal patients in a facility;

(6) requirements for data collection, including operation of the perinatal health care system and patient outcomes;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that health care facilities will not refuse to accept the transfer of a perinatal patient solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.043. DUTIES OF DEPARTMENT. The department shall:

(1) develop and monitor a statewide network of voluntary perinatal health care systems;

(2) develop and maintain a perinatal reporting and analysis system to monitor and evaluate perinatal patient care in the perinatal health care systems in this state; and

(3) provide for coordination and cooperation in this state and among this state and adjoining states.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.044. SYSTEM REQUIREMENTS. (a) Each voluntary perinatal health care system must have:

(1) a coordinating board responsible for ensuring, providing, or coordinating planning access to services, data collection, and provider education;

(2) access to appropriate emergency medical services;

(3) risk assessment, transport, and transfer protocols for perinatal patients;

(4) one or more health care facilities categorized according to perinatal care capabilities using standards adopted by board rule; and

(5) documentation of broad-based participation in planning by providers of perinatal services and community representatives throughout the defined geographic region.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.045. GRANT PROGRAM. (a) The department may establish a program to award grants to initiate, expand, maintain, and improve voluntary perinatal health care systems.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the need for emergency transportation of perinatal patients and the extent to which the system meets the identified needs; and

(6) the stage of development of a perinatal health care system.

(c) The department may approve grants according to rules adopted by the board. A grant awarded under this section is governed by Chapter 783, Government Code, and rules adopted under that chapter.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

**For expiration of this subchapter, see Section 32.065.**

**SUBCHAPTER C. TASK FORCE ON DOMESTIC VIOLENCE**

Sec. 32.061. DEFINITION. In this subchapter, "task force" means the task force on domestic violence.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1021 (H.B. 2620), Sec. 1, eff. June 14, 2013.

Sec. 32.062. ESTABLISHMENT; PRESIDING OFFICER. (a) The task force is composed of 25 members appointed by the executive commissioner of the Health and Human Services Commission as follows:

(1) four representatives of family violence centers, as defined by Section 51.002, Human Resources Code, from different

geographic regions in this state, including both rural and urban areas;

(2) one representative of a statewide family violence advocacy organization;

(3) one representative of a statewide association of obstetricians and gynecologists;

(4) two representatives of the family and community health programs in the Department of State Health Services;

(5) one representative of a statewide sexual assault advocacy organization;

(6) one representative of the Health and Human Services Commission Texas Home Visiting Program;

(7) one representative of a statewide association of midwifery;

(8) one representative of a statewide family physician's association;

(9) one representative of a statewide nursing association;

(10) one representative of a statewide hospital association;

(11) one representative of a statewide pediatric medical association;

(12) one representative of a statewide medical association;

(13) one representative of The University of Texas School of Social Work Institute on Domestic Violence and Sexual Assault;

(14) one representative of The University of Texas School of Law Domestic Violence Clinic;

(15) one representative of the governor's EMS and Trauma Advisory Council;

(16) one representative of a Department of Family and Protective Services prevention and early intervention program;

(17) one representative of a statewide osteopathic medical association;

(18) one representative of a statewide association of community health centers;

(19) one representative of the office of the attorney general;

(20) one representative from a medical school or a teaching hospital in the state who is either an attending physician of the hospital or a faculty member of the medical school; and

(21) one representative of the Health and Human Services

Commission's Family Violence Program.

(b) The executive commissioner of the Health and Human Services Commission shall appoint a task force member to serve as presiding officer of the task force.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1021 (H.B. 2620), Sec. 1, eff. June 14, 2013.

Sec. 32.063. DUTIES OF TASK FORCE. The task force shall meet at the call of the presiding officer to:

(1) examine the impact of domestic violence on maternal and infant mortality, the health of mothers, and the health and development of fetuses, infants, and children;

(2) identify the health care services available to children age two and younger and mothers and explore opportunities for improving the ability of those services to address domestic violence;

(3) identify methods to effectively include domestic violence information and support in educational standards for educators and protocols for health care providers; and

(4) investigate and make recommendations relating to the coordination of health care services for children age two and younger and pregnant and postpartum women who are victims of domestic violence, including recommendations for improving early screening and detection and public awareness efforts.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1021 (H.B. 2620), Sec. 1, eff. June 14, 2013.

Sec. 32.064. REPORT. Not later than September 1, 2015, the task force shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the standing committees of the legislature having primary jurisdiction over health and human services, the executive commissioner of the Health and Human Services Commission, and the commissioner of state health services containing:

(1) the findings and legislative, policy, and research recommendations of the task force; and

(2) a description of the activities of the task force.



Added by Acts 2013, 83rd Leg., R.S., Ch. 1021 (H.B. 2620), Sec. 1, eff. June 14, 2013.

Sec. 32.065. EXPIRATION. The task force is abolished and this subchapter expires January 1, 2016.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1021 (H.B. 2620), Sec. 1, eff. June 14, 2013.

**CHAPTER 33. PHENYLKETONURIA, OTHER HERITABLE DISEASES,  
HYPOTHYROIDISM, AND CERTAIN OTHER DISORDERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Birthing facility" means an inpatient or ambulatory health care facility that offers obstetrical or newborn care services. The term includes:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility that provides obstetrical services and is maintained and operated by this state or an agency of this state.

(1-a) "Critical congenital heart disease" means an abnormality in the structure or function of the heart that exists at birth, causes severe, life-threatening symptoms, and requires medical intervention within the first few hours, days, or months of life.

(1-b) "Heritable disease" means an inherited disease that may result in mental or physical retardation or death.

(2) "Hypothyroidism" means a condition that may cause severe mental retardation if not treated.

(3) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for the payment of the costs of services. The term includes:

(A) benefits available under:

(i) an insurance policy, group health plan, or prepaid medical care plan;

(ii) Title XVIII of the Social Security Act (42 U.S.C. Section 1395);

(iii) Title XIX of the Social Security Act (42 U.S.C. Section 1396);

(iv) the Veterans' Administration;

(v) the Civilian Health and Medical Program of the Uniformed Services; or

(vi) workers' compensation or any other compulsory employers insurance program;

(B) a public program created by federal or state law or by ordinance or rule of a municipality or political subdivision of the state, except those benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school; and

(C) benefits resulting from a cause of action for health care expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(4) "Phenylketonuria" means an inherited condition that may cause severe mental retardation if not treated.

(5) "Screening test" means a rapid analytical procedure to determine the need for further diagnostic evaluation.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 2, eff. September 1, 2013.

Sec. 33.002. DETECTION AND TREATMENT PROGRAM ESTABLISHED. (a) The department shall carry out a program to combat morbidity, including mental retardation, and mortality in persons who have phenylketonuria, other heritable diseases, or hypothyroidism.

(b) The board shall adopt rules necessary to carry out the program, including a rule specifying other heritable diseases covered by this chapter.

(c) The department shall establish and maintain a laboratory to:

(1) conduct experiments, projects, and other activities necessary to develop screening or diagnostic tests for the early detection of phenylketonuria, other heritable diseases, and

hypothyroidism;

(2) develop ways and means or discover methods to be used to prevent or treat phenylketonuria, other heritable diseases, and hypothyroidism; and

(3) serve other purposes considered necessary by the department to carry out the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.0021. SICKLE-CELL TRAIT. Notwithstanding any provision of this chapter, the department shall include sickle-cell trait in the detection and treatment program established under this chapter, in the screening for heritable diseases conducted under Subchapter B, and in the newborn screening services provided under Subchapter C.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 1, eff. May 27, 2009.

Sec. 33.003. COOPERATION OF HEALTH CARE PROVIDERS AND GOVERNMENTAL ENTITIES. (a) The department may invite all physicians, hospitals, and other health care providers in the state that provide maternity and newborn infant care to cooperate and participate in any program established by the department under this chapter.

(b) Other boards, agencies, departments, and political subdivisions of the state capable of assisting the department in carrying out the program may cooperate with the department and are encouraged to furnish their services and facilities to the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.004. STUDY ON NEWBORN SCREENING METHODOLOGY AND EQUIPMENT. (a) Not later than March 1, 2006, the department shall:

(1) conduct a study to determine the most cost-effective method of conducting newborn screening, including screening for disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics entitled "Newborn Screening: Toward a Uniform

Screening Panel and System" or another report determined by the department to provide more appropriate newborn screening guidelines, to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening;

(2) determine the disorders to be studied under Subdivision (1) and ensure the study does not examine screening and services provided under Chapter 47; and

(3) obtain proposals or information regarding the conduct of newborn screening and compare the costs of the department performing newborn screening services to the costs of outsourcing screening to a qualified laboratory with at least two years' experience performing newborn screening tests.

(b) In accordance with rules adopted by the executive commissioner of the Health and Human Services Commission, the department may implement a newborn screening program.

(c) If the department determines under Subsection (a) that the department's performance of newborn screening services is more cost-effective than outsourcing newborn screening, the department shall obtain the use of screening methodologies, including tandem mass spectrometers, and hire the employees necessary to administer newborn screening under this chapter.

(d) If the department determines under Subsection (a) that outsourcing of newborn screening is more cost-effective, the department shall contract for the resources and services necessary to conduct newborn screening using a competitive procurement process.

(e) The department shall periodically review the newborn screening program as revised under this section to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The department may adjust the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis.

Added by Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 2, eff. September 1, 2005.

**SUBCHAPTER B. NEWBORN SCREENING**

Sec. 33.011. TEST REQUIREMENT. (a) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall cause the child to be subjected to screening tests approved by the department for phenylketonuria, other heritable diseases, hypothyroidism, and other disorders for which screening is required by the department.

(a-1) Except as provided by this subsection and to the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed as core and secondary conditions in the December 2011 Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns. The department, with the advice of the Newborn Screening Advisory Committee, may require additional newborn screening tests under this subsection to screen for other disorders or conditions. The department may exclude from the newborn screening tests required under this subsection screenings for galactose epimerase and galactokinase.

(b) The department may prescribe the screening test procedures to be used and the standards of accuracy and precision required for each test.

(c) Except as provided by Subsection (d), the screening tests required by this section must be performed by the laboratory established by the department or by a laboratory approved by the department under Section 33.016.

(d) The department, with the advice of the Newborn Screening Advisory Committee, shall authorize a screening test for critical congenital heart disease to be performed at a birthing facility that provides care to newborn patients and that complies with the test procedures and the standards of accuracy and precision required by the department for each screening test.

(e) If the department under Subsection (d) authorizes the performance at a birthing facility of a screening test for critical congenital heart disease, a birthing facility must perform the screening test on each newborn who is a patient of the facility before the newborn is discharged from the facility unless:

- (1) the parent declines the screening;

(2) the newborn is transferred to another facility before the screening test is performed;

(3) the screening test has previously been completed; or

(4) the newborn is discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to another birthing facility, physician, or health care provider.

(f) Before requiring any additional screening test for critical congenital heart disease, the department must review the necessity of the additional screening test, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 3, eff. September 1, 2013.

Sec. 33.0111. DISCLOSURE STATEMENT AND CONSENT. (a) The department shall develop a disclosure statement that clearly discloses to the parent, managing conservator, or guardian of a newborn child subjected to screening tests under Section 33.011:

(1) that the department or a laboratory established or approved by the department under Section 33.016 may retain for use by the department or laboratory genetic material used to conduct the newborn screening tests and discloses how the material is managed and used subject to this section and Sections 33.0112 and 33.018;

(2) that reports, records, and information obtained by the department under this chapter that do not identify a child or the family of a child will not be released for public health research purposes under Section 33.018(c-1) unless a parent, managing conservator, or guardian of the child consents to disclosure; and

(3) that newborn screening blood spots and associated data are confidential under law and may only be used as described by Section 33.018.

(b) The disclosure statement required by Subsection (a) must be included on the form developed by the department to inform parents about newborn screening. The disclosure statement must:

- (1) be in a format that allows a parent, managing conservator, or guardian of a newborn child to consent to disclosure under Section 33.018(c-1);
- (2) include instructions on how to complete the portions of the form described by Subdivision (1);
- (3) include the department's mailing address; and
- (4) describe how a parent, managing conservator, or guardian of a newborn child may obtain information regarding consent through alternative sources.

(c) At the time a newborn child is subjected to screening tests under Section 33.011, the physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall provide the parent, managing conservator, or guardian of a newborn child a copy of the written disclosure statement developed by the department under this section.

(d) The department shall establish procedures for a physician attending a newborn child or the person attending the delivery of a newborn child to provide verification to the department that the physician or person has provided the parent, managing conservator, or guardian of the newborn child the disclosure statement required under this section.

(e) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall submit any document required by the department.

(f) This section does not supersede the requirements imposed by Section 33.018.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 268, Sec. 7, eff. September 1, 2013.

(h) Nothing in this section prohibits a physician attending a newborn child from delegating the physician's responsibilities under this section to any qualified and properly trained person acting under the physician's supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. [1672](#)), Sec. 2, eff. May 27, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 1, eff.

June 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 2, eff. June 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 7, eff. September 1, 2013.

Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.017(c-1).

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.017(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section 33.017(i); and

(3) the department receives the written revocation of consent under Section 33.017(i) not later than the second anniversary of the date the department received the genetic material.

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of consent under Section 33.017(i) if:

(1) a parent, managing conservator, or guardian of the child consented to disclosure under Section 33.017(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure or the child revokes the consent under Section 33.017(i); and

(3) the department receives the written revocation of consent later than the second anniversary of the date the department received the genetic material.

(d) A reference in this section to Section 33.017 means Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st



Legislature, Regular Session, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 2, eff. May 27, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 3, eff. June 1, 2012.

Sec. 33.012. EXEMPTION. (a) Screening tests may not be administered to a newborn child whose parents, managing conservator, or guardian objects on the ground that the tests conflict with the religious tenets or practices of an organized church of which they are adherents.

(b) If a parent, managing conservator, or guardian objects to the screening tests, the physician or the person attending the newborn child that is not attended by a physician shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the child. The parent, managing conservator, or guardian shall sign the entry.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.013. LIMITATION ON LIABILITY. A physician, technician, or other person administering the screening tests required by this chapter is not liable or responsible because of the failure or refusal of a parent, managing conservator, or guardian to consent to the tests for which this chapter provides.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.014. DIAGNOSIS; FOLLOW-UP. (a) If, because of an analysis of a specimen submitted under Section 33.011, the department reasonably suspects that a newborn child may have phenylketonuria, another heritable disease, hypothyroidism, or another disorder for which the screening tests are required, the department shall notify the person who submits the specimen that the results are abnormal and provide the test results to that person. The department may notify one or more of the following that the results of the analysis are

abnormal and recommend further testing when necessary:

- (1) the physician attending the newborn child or the physician's designee;
- (2) the person attending the delivery of the newborn child that was not attended by a physician;
- (3) the parents of the newborn child;
- (4) the health authority of the jurisdiction in which the newborn child was born or in which the child resides, if known; or
- (5) physicians who are cooperating pediatric specialists for the program.

(b) If a screening test indicates that a newborn child is at high risk, the department shall recommend that the child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant pediatric specialist in the child's geographic area.

(c) The department, the health authority, and the consulting pediatric specialist may follow up a positive test with the attending physician or with a parent of the newborn child if the child was not attended by a physician at birth.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 4, eff. September 1, 2005.

Sec. 33.015. REPORTS; RECORD KEEPING. (a) Each physician, health authority, birthing facility, or other individual who has the information of a confirmed case of a disorder for which a screening test is required that has been detected by a mechanism other than identification through a screening of a specimen by the department's diagnostic laboratory shall report the confirmed case to the department.

(b) The department may collect data to derive incidence and prevalence rates of disorders covered by this chapter from the information on the specimen form submitted to the department for screening determinations.

(c) The department shall maintain a roster of children born in this state who have been diagnosed as having one of the disorders for which the screening tests are required.

(d) The department may cooperate with other states in the development of a national roster of individuals who have been diagnosed as having one of the disorders for which the screening tests are required if:

(1) participation in the national roster encourages systematic follow-up in the participating states;

(2) incidence and prevalence information is made available to participating newborn screening programs in other states; and

(3) each participating newborn screening program subscribes to an agreement to protect the identity and diagnosis of the individuals whose names are included in the national roster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 5, eff. September 1, 2013.

Sec. 33.016. APPROVAL OF LABORATORIES. (a) The department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this chapter. To the extent that they are not otherwise provided in this chapter, the board may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the board.

(e) The department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this section.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the board and the applicable provisions of Chapter 2001, Government Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 33.017. NEWBORN SCREENING ADVISORY COMMITTEE. (a) The department shall establish the Newborn Screening Advisory Committee.

(b) The advisory committee consists of members appointed by the commissioner of state health services. The advisory committee must include the following members:

(1) at least four physicians licensed to practice medicine in this state, including at least two physicians specializing in neonatal-perinatal medicine;

(2) at least two hospital representatives;

(3) at least two persons who have family members affected by a condition for which newborn screening is or may be required under this subchapter; and

(4) at least two health care providers who are involved in the delivery of newborn screening services, follow-up, or treatment in this state.

(c) The advisory committee shall:

(1) advise the department regarding strategic planning, policy, rules, and services related to newborn screening and additional newborn screening tests for each disorder included in the list described by Section 33.011(a-1); and

(2) review the necessity of requiring additional screening tests, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

(d) The advisory committee shall adopt bylaws governing the committee's operations.

(e) The advisory committee may appoint subcommittees.

(f) The advisory committee shall meet at least three times each year and at other times at the call of the commissioner of state health services.

(g) A member of the advisory committee is not entitled to compensation, but is entitled to reimbursement for travel or other expenses incurred by the member while conducting the business of the advisory committee, as provided by the General Appropriations Act.

(h) The advisory committee is not subject to Chapter 2110, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. [1795](#)), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 6, eff. September 1, 2013.

Sec. 33.018. CONFIDENTIALITY. (a) In this section:

(1) "Affiliated with a health agency" means a person who is an employee or former employee of a health agency.

(2) "Commission" means the Health and Human Services Commission.

(3) "Commissioner" means the commissioner of state health services.

(4) "Health agency" means the commission and the health and human services agencies listed in Section 531.001, Government Code.

(5) "Public health purpose" means a purpose that relates to cancer, a birth defect, an infectious disease, a chronic disease, environmental exposure, or newborn screening.

(a-1) Reports, records, and information obtained or developed by the department under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this section.

(b) Notwithstanding other law, reports, records, and information obtained or developed by the department under this chapter may be disclosed:

(1) for purposes of diagnosis or follow-up authorized under Section 33.014;

(2) with the consent of each identified individual or an individual authorized to consent on behalf of an identified child;

(3) as authorized by court order;

(4) to a medical examiner authorized to conduct an autopsy on a child or an inquest on the death of a child;

(5) to public health programs of the department for public health research purposes, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee;  
and

(B) an institutional review board or privacy board of the department as authorized by the federal privacy requirements adopted under the Health Insurance Portability and Accountability Act

of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E;

(6) for purposes relating to review or quality assurance of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that no disclosure occurs outside of the department's newborn screening program;

(7) for purposes related to obtaining or maintaining federal certification, including related quality assurance, for the department's laboratory, provided that no disclosure occurs outside of the department's newborn screening program; or

(8) for purposes relating to improvement of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that the disclosure is approved by the commissioner or the commissioner's designee.

(c) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released without consent if the disclosure is for:

(1) statistical purposes;

(2) purposes related to obtaining or maintaining federal certification, including related review and quality assurance:

(A) for the department's laboratory that require disclosure outside of the department's newborn screening program; or

(B) for a public or private laboratory to perform newborn screening tests that are not part of inter-laboratory exchanges required for federal certification of the department's laboratory, provided that the disclosure is approved by the commissioner or the commissioner's designee; or

(3) other quality assurance purposes related to public health testing equipment and supplies, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee;  
and

(B) an institutional review board or privacy board of the department.

(c-1) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released for public health research purposes not described by Subsection (b)(5) if:

(1) a parent, managing conservator, or guardian of the child consents to the disclosure; and

(2) the disclosure is approved by:

(A) an institutional review board or privacy board of the department; and

(B) the commissioner or the commissioner's designee.

(d) A state officer or employee, a department contractor, or a department contractor's employee, officer, director, or subcontractor may not be examined in a civil, criminal, special, or other judicial or administrative proceeding as to the existence or contents of records, reports, or information made confidential by this section unless disclosure is authorized by this section.

(e) If disclosure is approved by the commissioner or the commissioner's designee under Subsection (c)(3) or (c-1), the department shall post notice on the newborn screening web page on the department's Internet website that disclosure has been approved. The commissioner shall determine the form and content of the notice.

(f) In accordance with this section, the commissioner or the commissioner's designee:

(1) may approve disclosure of reports, records, or information obtained or developed under this chapter only for a public health purpose; and

(2) may not approve disclosure of reports, records, or information obtained or developed under this chapter for purposes related to forensic science or health insurance underwriting.

(g) An institutional review board or privacy board of the department that reviews a potential disclosure under this section must include at least three persons who are not affiliated with a health agency, one of whom must be a member of the public.

(h) Nothing in this section affects the requirement that screening tests be performed under Section 33.011.

(i) If a parent, managing conservator, or guardian of a child consents to disclosure under this section:

(1) the parent, managing conservator, or guardian who consented to the disclosure may revoke the consent, in writing, at any time by using a form designated by the department; and

(2) the child may revoke the consent, in writing, at any time on or after the date the child attains the age of majority by using a form designated by the department.

(j) If a person revokes consent under Subsection (i), the

department shall destroy any genetic material obtained from the child as provided by Section 33.0112.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 3, eff. May 27, 2009.

Redesignated from Health and Safety Code, Section 33.017 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(24), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 17, 2011.

#### **SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES**

Sec. 33.031. COORDINATION WITH CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES. (a) All newborn children and other individuals under 21 years of age who have been screened, have been found to be presumptively positive through the newborn screening program for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required, and may be financially eligible may be referred to the department's services program for children with special health care needs.

(b) An individual who is determined to be eligible for services under the services program for children with special health care needs shall be given approved services through that program. An individual who does not meet that eligibility criteria shall be referred to the newborn screening program for a determination of eligibility for newborn screening program services.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1505, Sec. 3.11, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 5, eff. September 1, 2005.

Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of funds available for this purpose and in cooperation with the individual's physician, the department may provide services directly or through



approved providers to individuals of any age who meet the eligibility criteria specified by board rules on the confirmation of a positive test for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required.

(b) The board may adopt:

(1) rules specifying the type, amount, and duration of program services to be offered;

(2) rules establishing the criteria for eligibility for services, including the medical and financial criteria;

(3) rules establishing the procedures necessary to determine the medical, financial, and other eligibility of the individual;

(4) substantive and procedural rules for applying for program services and processing those applications;

(5) rules for providing services according to a sliding scale of financial eligibility;

(6) substantive and procedural rules for the denial, modification, suspension, and revocation of an individual's approval to receive services; and

(7) substantive and procedural rules for the approval of providers to furnish program services.

(c) The department may select providers according to the criteria in the board's rules.

(d) The board may charge fees for the provision of services, except that services may not be denied to an individual because of the individual's inability to pay the fees.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 6, eff. September 1, 2005.

Sec. 33.033. CONSENT. The department may not provide services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.034. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION

OF APPROVAL TO PROVIDE SERVICES. (a) After notice and an opportunity for a fair hearing, the department may deny the approval or modify, suspend, or revoke the approval of a person to provide services under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, does not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.001, eff. September 1, 2005.

Sec. 33.035. INDIVIDUALS ELIGIBLE FOR SERVICES. (a) An individual is not eligible to receive the services authorized by this chapter at no cost or reduced cost to the extent that the individual or the parent, managing conservator, guardian, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of services to an otherwise eligible recipient.

(c) When an application for services is filed or at any time that an individual is eligible for or receiving services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The board by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice to the

individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian and an opportunity for a fair hearing, the department may deny, modify, suspend, or revoke the determination of a person's eligibility to receive services at no cost or at reduced cost under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, do not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 33.037. REIMBURSEMENT. (a) The board may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, or other person with a legal obligation to support the individual to pay or reimburse the department for all or part of the cost of the services provided.

(b) The recipient or the parent, managing conservator, guardian, or other person with a legal obligation to support an individual who has received services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.038. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has received prior written notice of the department's interests in the other benefits.

(b) This section creates a separate and distinct cause of action, and the commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may

award attorney fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

(d) The board by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

**For expiration of this subchapter, see Section 33.056.**

**SUBCHAPTER D. SICKLE CELL DISEASE PROGRAM**

Sec. 33.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health and human services agency" means a health and human services agency listed by Section 531.001, Government Code.

(4) "Program" means the sickle cell disease program established under this subchapter.

(5) "Sickle cell disease" means any variant of sickle cell disease, including sickle cell anemia and sickle cell thalassemia.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

Sec. 33.052. DUTIES OF DEPARTMENT. The department shall:

(1) identify efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with sickle cell trait and sickle cell disease;

(2) assist the advisory committee created under Section 33.053; and

(3) provide the advisory committee created under Section 33.053 with staff support necessary for the advisory committee to fulfill its duties.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

Sec. 33.053. ADVISORY COMMITTEE. (a) The governor shall appoint an advisory committee composed of 11 members, including a program administrator. The members must be located in geographically diverse areas of the state and must be interested in and knowledgeable about sickle cell trait and sickle cell disease. In making appointments to the advisory committee, the governor shall consider appointing members who are:

- (1) representatives of a community agency;
- (2) state or local officials responsible for public health, social services, or rehabilitation;
- (3) representatives from educational institutions, including schools and universities;
- (4) physicians and other health care providers; and
- (5) persons with, or relatives of persons with, sickle cell trait or sickle cell disease.

(b) Members of the advisory committee serve staggered three-year terms, with the terms of three or four members expiring each year.

(c) The advisory committee shall meet at least twice a year.

(d) The advisory committee shall conduct a needs assessment and advise the department and the program administrator regarding the needs of individuals with sickle cell trait and sickle cell disease and make recommendations, including recommendations regarding legislative action, department rules, and program administration.

(e) The program administrator shall report periodically to the executive commissioner and annually to the governor regarding the advisory committee's activities and findings.

(f) A member of the advisory committee is not entitled to compensation but is entitled to reimbursement for travel or other expenses incurred while conducting the business of the advisory committee as provided by the General Appropriations Act.

(g) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

Sec. 33.054. GRANTS. (a) The program administrator shall investigate and identify grants and other funding mechanisms for

entities that:

- (1) provide education regarding sickle cell trait and sickle cell disease;
- (2) improve the detection of sickle cell trait and sickle cell disease and the treatment of sickle cell disease;
- (3) coordinate delivery of services for people with sickle cell disease;
- (4) provide access to information regarding genetic testing and counseling;
- (5) bundle technical services related to the prevention and treatment of sickle cell disease; and
- (6) provide training for health professionals regarding sickle cell trait and sickle cell disease.

(b) The program administrator shall award grants, if possible, to eligible organizations in different regions of this state.

(c) The department may solicit and accept gifts, grants, and donations of money from the federal government, local governments, private corporations, and other persons to be used for the purpose of awarding grants under the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

Sec. 33.055. RULES. The executive commissioner may adopt rules to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

Sec. 33.056. EXPIRATION. This subchapter expires September 1, 2017.

Added by Acts 2011, 82nd Leg., R.S., Ch. 315 (H.B. [2312](#)), Sec. 1, eff. June 17, 2011.

#### **CHAPTER 34. MATERNAL MORTALITY AND MORBIDITY TASK FORCE**

Sec. 34.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health

services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, including a physician or a hospital or birthing center.

(5) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(6) "Intrapartum care" has the meaning assigned by Section 32.002.

(7) "Life-threatening condition" means a condition from which the likelihood of death is probable unless the course of the condition is interrupted.

(8) "Maternal morbidity" means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

(9) "Patient" means the woman who while pregnant or within one year of delivery or end of pregnancy suffers death or severe maternal morbidity.

(10) "Perinatal care" has the meaning assigned by Section 32.002.

(11) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(12) "Pregnancy-related death" means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(13) "Severe maternal morbidity" means maternal morbidity that constitutes a life-threatening condition.

(14) "Task force" means the Maternal Mortality and Morbidity Task Force.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. [495](#)), Sec. 1, eff. September 1, 2013.

Sec. 34.002. MATERNAL MORTALITY AND MORBIDITY TASK FORCE. (a) The Maternal Mortality and Morbidity Task Force is administered by the department.

(b) The task force is a multidisciplinary advisory committee within the department and is composed of the following 15 members:

- (1) 13 members appointed by the commissioner as follows:
  - (A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;
  - (B) one certified nurse-midwife;
  - (C) one registered nurse;
  - (D) one physician specializing in family practice;
  - (E) one physician specializing in psychiatry;
  - (F) one physician specializing in pathology;
  - (G) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;
  - (H) one social worker or social service provider;
  - (I) one community advocate in a relevant field; and
  - (J) one medical examiner or coroner responsible for recording deaths;

(2) a representative of the department's family and community health programs; and

(3) the state epidemiologist for the department or the epidemiologist's designee.

(c) In appointing members to the task force, the commissioner shall:

- (1) include members:
  - (A) working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency; and
  - (B) from differing geographic regions in the state, including both rural and urban areas;

(2) endeavor to include members who are working in and representing communities that are affected by pregnancy-related deaths and severe maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(3) ensure that the composition of the task force reflects the racial, ethnic, and linguistic diversity of this state.

(d) The commissioner shall appoint from among the task force members a presiding officer.

(e) A member of the task force appointed under Subsection



(b)(1) is not entitled to compensation for service on the task force or reimbursement for travel or other expenses incurred by the member while conducting the business of the task force.

(f) In carrying out its duties, the task force may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.003. TERMS; VACANCY. (a) Task force members appointed by the commissioner serve staggered six-year terms, with the terms of four or five members, as appropriate, expiring February 1 of each odd-numbered year.

(b) A task force member may serve more than one term.

(c) A vacancy on the task force shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.004. MEETINGS. (a) The task force shall meet at least quarterly. The task force may meet at other times at the call of the commissioner.

(b) Meetings of the task force are closed to the public and are not subject to Chapter 551, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.005. DUTIES OF TASK FORCE. The task force shall:

(1) study and review:

(A) cases of pregnancy-related deaths; and

(B) trends in severe maternal morbidity;

(2) determine the feasibility of the task force studying cases of severe maternal morbidity; and

(3) make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.006. CONSULTATIONS AND AGREEMENTS WITH OUTSIDE PARTIES.

(a) The department and task force may consult with any relevant experts and stakeholders, including:

- (1) anesthesiologists;
- (2) intensivists or critical care physicians;
- (3) nutritionists;
- (4) substance abuse treatment specialists;
- (5) hospital staff or employees;
- (6) representatives of the state Medicaid program;
- (7) paramedics or other emergency medical response

personnel;

- (8) hospital-based risk management specialists;
- (9) representatives of local health departments and public health districts in this state;
- (10) public health experts;
- (11) government representatives or officials; and
- (12) law enforcement officials.

(b) In gathering information, the department and task force may consult with representatives of any relevant state professional associations and organizations, including:

- (1) District XI of the American Congress of Obstetricians and Gynecologists;
- (2) the Texas Association of Obstetricians and Gynecologists;
- (3) the Texas Nurses Association;
- (4) the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
- (5) the Texas Academy of Family Physicians;
- (6) the Texas Pediatric Society;
- (7) the Consortium of Texas Certified Nurse-Midwives;
- (8) the Association of Texas Midwives;
- (9) the Texas Hospital Association;
- (10) the Texas Medical Association; and
- (11) the Texas Public Health Association.

(c) In consulting with individuals or organizations under Subsection (a) or (b), a member of the task force or employee of the

department may not disclose any identifying information of a patient or health care provider.

(d) The department on behalf of the task force may enter into agreements with institutions of higher education or other organizations consistent with the duties of the department or task force under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.007. SELECTION AND REVIEW OF CASES. (a) The department shall determine a statistically significant number of cases of pregnancy-related deaths for review. The department shall randomly select cases for the task force to review under this subsection to reflect a cross-section of pregnancy-related deaths in this state.

(b) The department shall analyze aggregate data of severe maternal morbidity in this state to identify any trends.

(c) If feasible, the department may select cases of severe maternal morbidity for review. In selecting cases under this subsection, the department shall randomly select cases for the task force to review to reflect trends identified under Subsection (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.008. OBTAINING DE-IDENTIFIED INFORMATION FOR REVIEW.

(a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the task force to review the case. The department shall provide the information to the task force.

(b) The information provided to the task force may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(c) On the request of the department, a hospital, birthing center, or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

(d) A person who provides information to the department under this section is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.009. CONFIDENTIALITY; PRIVILEGE. (a) Any information pertaining to a pregnancy-related death or severe maternal morbidity is confidential for purposes of this chapter.

(b) Confidential information that is acquired by the department and that includes identifying information of an individual or health care provider is privileged and may not be disclosed to any person. Information that may not be disclosed under this subsection includes:

(1) the name and address of a patient or a member of the patient's family;

(2) any service received by the patient or a member of the patient's family;

(3) the social and economic condition of the patient or a member of the patient's family;

(4) medical, dental, and mental health care information related to the patient or a member of the patient's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of a health care provider that provided any services to the patient or a member of the patient's family.

(c) Task force work product or information obtained by the department under this chapter, including information contained in an electronic database established and maintained under Section 34.012, or any other document or record, is confidential. This subsection does not prevent the task force or department from releasing information described by Subsection (d) or (e) or from submitting the report required by Section 34.015.

(d) Information is not confidential under this section if the information is general information that cannot be connected with any

specific individual, case, or health care provider, such as:

- (1) total expenditures made for specified purposes;
- (2) the number of families served by particular health care providers or agencies;
- (3) aggregated data on social and economic conditions;
- (4) medical data and information related to health care services that do not include any identifying information relating to a patient or the patient's family; and
- (5) other statistical information.

(e) The task force may publish statistical studies and research reports based on information that is confidential under this section, provided that the information:

- (1) is published in the aggregate;
- (2) does not identify a patient or the patient's family;
- (3) does not include any information that could be used to identify a patient or the patient's family; and
- (4) does not identify a health care provider.

(f) The department shall adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(g) Information that is confidential under this section is excepted from disclosure under Chapter 552, Government Code, as provided by Section 552.101 of that chapter.

(h) The task force and the department shall comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.010. SUBPOENA AND DISCOVERY. Task force work product or information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff.

September 1, 2013.

Sec. 34.011. IMMUNITY. (a) A member of the task force or a person employed by or acting in an advisory capacity to the task force and who provides information, counsel, or services to the task force is not liable for damages for an action taken within the scope of the functions of the task force.

(b) Subsection (a) does not apply if the person acts with malice or without the reasonable belief that the action is warranted by the facts known to the person.

(c) This section does not provide immunity to a person described by Subsection (a) for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION. (a) The department may establish and maintain an electronic database to track cases of pregnancy-related deaths and severe maternal morbidity to assist the department and task force in performing functions under this chapter.

(b) The information in the database may not include identifying information, including:

(1) the name of a patient; or

(2) the name or specific location of a health care provider that treated a patient.

(c) The database may be accessed only by the department and the task force for the purposes described in this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.013. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic

termination of pregnancy, and those records may not be collected, maintained, or disclosed under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.014. FUNDING. The department may accept gifts and grants from any source to fund the duties of the department and the task force under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.015. REPORTS. (a) Not later than September 1 of each even-numbered year, the task force and the department shall submit a joint report on the findings of the task force under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) The report must include the task force's recommendations under Section 34.005(3).

(c) The department shall disseminate the report to the state professional associations and organizations listed in Section 34.006(b) and make the report publicly available in paper or electronic form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.016. RULES. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION. (a) Notwithstanding Chapter 108 or any other law, the department may have access to the following information that may include the identity of

a patient to fulfill its duties under this chapter:

- (1) birth records;
- (2) fetal death records;
- (3) maternal death records; and
- (4) hospital and birthing center discharge data.

(b) The department may not disclose the information described by Subsection (a) to the task force or any other person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.018. SUNSET PROVISION. The task force is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the task force is abolished and this chapter expires September 1, 2019.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

### **CHAPTER 35. CHILDREN WITH SPECIAL HEALTH CARE NEEDS**

Sec. 35.001. SHORT TITLE. This chapter may be cited as the Children with Special Health Care Needs Services Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 35.0021. DEFINITIONS. In this chapter:

- (1) "Case management services" includes:
  - (A) coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and caregivers, insurance services, and other services needed to improve the well-being of the child and the child's family; and
  - (B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.
- (2) "Child with special health care needs" has the meaning



assigned by Section 35.0022.

(3) "Dentist" means a person licensed by the State Board of Dental Examiners to practice dentistry in this state.

(4) "Facility" includes a hospital, an ambulatory surgical center, and an outpatient clinic.

(5) "Family support services" means support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), as amended, and permanency planning, as that term is defined by Section 531.151, Government Code.

(6) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the program, including benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

(C) the Department of Veterans Affairs;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(7) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(8) "Program" means the services program for children with

special health care needs.

(9) "Provider" means a person who delivers services purchased by the department for the purposes of this chapter.

(10) "Rehabilitation services" means the process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury and includes:

(A) facility care, medical and dental care, and occupational, speech, and physical therapy;

(B) the provision of braces, artificial appliances, durable medical equipment, and other medical supplies; and

(C) other types of care specified by the board in the program rules.

(11) "Services" means the care, activities, and supplies provided under this chapter or program rules, including medical care, dental care, facility care, medical supplies, occupational, physical, and speech therapy, and other care specified by program rules.

(12) "Specialty center" means a facility and staff that meet minimum standards established under the program and are designated by the board for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

(13) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.0022. CHILD WITH SPECIAL HEALTH CARE NEEDS. (a) In this chapter, "child with special health care needs" means a person who:

(1) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(2) has cystic fibrosis, regardless of the person's age.

(b) The term "child with special health care needs" may include a person who has a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has a behavioral or emotional condition without having an accompanying physical or developmental condition.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.003. SERVICES PROGRAM FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) The program is in the department to provide services to eligible children with special health care needs. The program shall provide:

- (1) early identification of children with special health care needs;
- (2) diagnosis and evaluation of children with special health care needs;
- (3) rehabilitation services to children with special health care needs;
- (4) development and improvement of standards and services for children with special health care needs;
- (5) case management services;
- (6) other family support services; and
- (7) access to health benefits plan coverage under Section 35.0031.

(b) The board by rule shall:

- (1) specify the type, amount, and duration of services to be provided under this chapter; and
- (2) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services. A waiting list of eligible persons may be established if necessary for the program to remain within the budgetary limitations. The department shall collect from each applicant for services who is placed on a waiting list appropriate information to facilitate contacting the applicant when services become available and to allow efficient enrollment of the applicant in those services. The information collected must include:

- (1) the applicant's name, address, and phone number;
- (2) the name, address, and phone number of a contact person other than the applicant;
- (3) the date of the applicant's earliest application for services;

(4) the applicant's functional needs;  
(5) the range of services needed by the applicant; and  
(6) a date on which the applicant is scheduled for reassessment.

(d) The program may provide:

(1) transportation and subsistence for an eligible child with special health care needs and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program; and

(2) the following services to an eligible child with special health care needs who dies in an approved facility outside the child's municipality of residence while receiving program services:

(A) the transportation of the child's remains, and the transportation of a parent or other person accompanying the remains, from the facility to the place of burial in this state that is designated by the parent or other person legally responsible for interment;

(B) the expense of embalming, if required for transportation;

(C) the cost of a coffin purchased at a minimum price, if a coffin is required for transportation; and

(D) any other necessary expenses directly related to the care and return of the child's remains to the place of burial in this state.

(e) The department may:

(1) develop methods to improve the efficiency and effectiveness of the program; and

(2) conduct pilot studies.

(f) The program is separate from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 35.0031. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN ELIGIBLE CHILDREN. The department shall obtain coverage under a health benefits plan for a child who:

- (1) is eligible for services under this chapter; and
- (2) is not eligible for assistance under:
  - (A) a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended; or
  - (B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0032. BENEFITS COVERAGE REQUIRED. To the extent possible, the health benefits plan required by Section 35.0031 must provide benefits comparable to the benefits provided under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0033. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider who provides coverage for benefits under Section 35.0031 must:

- (1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered under Section 35.0031; and

- (2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

- (b) Except as required by the department, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0034. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the department may not require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The department may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under Section 35.0031 that is equal to any copayment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

(c) The department may require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0035. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under Section 35.0031 may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.004. SERVICE PROVIDERS. (a) The board shall adopt substantive and procedural rules for the selection of providers to

participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The board shall approve physicians, dentists, licensed dietitians, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by the board.

(c) The department may pay only for services delivered by an approved provider, except in an emergency.

(d) Except as specified in the program rules, a recipient of services may select any provider approved by the board. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The board shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(g) The department may not terminate the approval of a provider while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the board regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds.

(j) This section does not apply to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.05, eff. Sept. 1, 1999.

Sec. 35.0041. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS. (a) The department by rule shall develop and implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(b) The policies must provide for reimbursement of:

(1) providers using telemedicine medical services and telehealth services in a cost-effective manner that ensures the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and telehealth services that are comparable to the same types of services available to that child without use of telemedicine medical services and telehealth services;

(2) a provider for a service performed using telemedicine medical services and telehealth services at an amount equal to the amount paid to a provider for performing the same service without using telemedicine medical services and telehealth services;

(3) multiple providers of different services who participate in a single telemedicine medical services or telehealth services session for a child with special health care needs, if the department determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs; and

(4) providers using telemedicine medical services and telehealth services included in the school health and related services program.

(c) In developing and implementing the policies required by this section, the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the Health and Human Services Commission, including the state Medicaid office;



(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

(d) This section applies to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 4, eff. June 14, 2001.

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The board by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the board may not:

(1) establish an exclusive list of coverable medical conditions; or

(2) consider as a source of support to provide services assets legally owned or available to a child's household.

(c) A child is not eligible to receive rehabilitation services unless:

(1) the child is a resident of this state;

(2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the board;

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or equal to 200 percent of the federal poverty level; and

(5) the child meets all other eligibility criteria established by board rules.

(d) A child is not eligible to receive services, other than rehabilitation services, unless the child:

- (1) is a resident of this state; and
- (2) meets all other eligibility criteria established by board rules.

(e) Notwithstanding Subsection (c)(4), a child with special health care needs who has a family income that is greater than 200 percent of the federal poverty level and who meets all other eligibility criteria established by this section and by board rules is eligible for services if the department determines that the child's family is or will be responsible for medical expenses that are equal to or greater than the amount by which the family's income exceeds 200 percent of the federal poverty level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.06, eff. Sept. 1, 1999.

Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The board shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(b) The department may deny services to an applicant and modify, suspend, or terminate services to a recipient after:

- (1) notice to the child or the person who is legally obligated to support the child;
- (2) a preliminary program review; and
- (3) an opportunity for a fair hearing.

(c) The board by rule shall provide criteria for action by the department under this section.

(d) The department shall conduct hearings under this section in accordance with the board's due process hearing rules. Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of services.

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 35.0061. REFERRAL FOR BEHAVIORAL OR EMOTIONAL CONDITIONS. If a child with special health care needs who is eligible for services under this chapter has a behavioral or emotional condition and the child is eligible for services from another provider of services that would address the behavioral or emotional condition, the department shall refer the child to that provider for those services.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.07, eff. Sept. 1, 1999.

Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The board shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services. The board may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

(c) When the application is made under this chapter or at any time before, during, or after the receipt of services, an applicant for or recipient of services shall inform the department of any other benefit to which the child or any person who has a legal obligation to support the child may be entitled.

(d) A child who has received services that are covered by some other benefit, or any other person with a legal obligation to support the child, shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The department may collect the cost of services provided under this chapter directly:

(1) in accordance with Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

or

(2) from any personal insurance, a health maintenance organization, or any other third party who has a legal obligation to pay other benefits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.08, eff. Sept. 1, 1999.

Sec. 35.008. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not pay or reimburse the department as required by Section 35.007 or from any third party who has a legal obligation to pay other benefits.

(b) This section creates a separate cause of action, and the commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.009. FEES. The board may adopt reasonable procedures and standards for the determination of fees and charges for program services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.010. FUNDING. The department may receive and spend:

(1) gifts made for the purposes of this chapter; and  
(2) funds appropriated or granted by the state or federal government to provide services for children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.011. CONTRACTS. The department may enter into

contracts and agreements necessary to carry out this chapter, including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.012. RECORDS. (a) The department may take a census, make surveys, and establish permanent records of children with special health care needs.

(b) The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for children with special health care needs. Those items are not state-owned personal property and are exempt from the personal property inventory requirements of Subtitle D, Title 10, Government Code.

(c) The purchase of the items described by Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 11, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.09, eff. Sept. 1, 1999.

Sec. 35.013. LIMITATIONS ON AUTHORITY. (a) This chapter does not limit the authority of a parent, managing conservator, or guardian over a minor.

(b) This chapter does not entitle an employee, agent, or representative of the department or other official agent to enter a home over the objection of a child or, if the child is a minor, over the objection of the child's parent, managing conservator, or guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS**

Sec. 36.001. SHORT TITLE. This chapter may be cited as the

## Special Senses and Communication Disorders Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.002. PURPOSE. (a) The purpose of this chapter is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders provide the individuals with the opportunity to reach academic and social status through adequate educational planning and training.

(b) This chapter shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.003. DEFINITIONS. In this chapter:

(1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for payment of the costs of remedial services, and includes:

(A) benefits received under a personal insurance contract;

(B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(C) payments received from any other source.

(3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but younger than five years of age.

(4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.

(5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center, university, or medical school.

(6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.

(7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.

(9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The board by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the board. In developing the rules, the board may consider the number of individuals to be screened and the availability of:

(1) personnel qualified to administer the required screening;

(2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(b) The rules must include procedures necessary to administer screening activities.

(c) The board shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

(d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether

that professional is under contract with the department, if:

(1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and

(2) the professional uses acceptable procedures for the screening.

(e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.

(g) The department shall monitor the quality of screening activities provided under this chapter.

(h) This section does not prohibit a volunteer from participating in the department's screening programs.

(i) A hearing screening performed under this section is in addition to any hearing screening test performed under Chapter 47.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1347, Sec. 2, eff. Sept. 1, 1999.

Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the board. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the board. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the



individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the board or submits an affidavit of exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.006. RECORDS; REPORTS. (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.

(c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the board. The report must be on a form prescribed by the department and must be submitted according to the board's rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.007. PROVISION OF REMEDIAL SERVICES. (a) The department may provide remedial services directly or through approved providers to eligible individuals who have certain special senses and communication disorders and who are not eligible for special education services that remediate those disorders and that are administered by the Texas Education Agency through the public

schools.

(b) The board by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The board may establish a schedule to determine financial eligibility.

(d) The department may not require remedial services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.34, eff. Sept. 1, 1997.

Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES. (a) An individual is not eligible to receive the remedial services authorized by this chapter to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of remedial services to an otherwise eligible recipient.

(c) When an application for remedial services is filed or at any time that an individual is eligible for and receiving remedial services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The department may modify, suspend, or terminate the

eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the informal hearing rules adopted by the board.

(e) The board by rule shall provide criteria for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.009. REIMBURSEMENT. (a) The board may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

(b) The recipient or the parent, managing conservator, or other person with a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.010. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has notice of the department's interests in the other benefits.

(b) The commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be ancillary or dependent on any other action.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

(d) The board by rule shall provide criteria for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.011. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND REMEDIAL SERVICES. (a) The department may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

(b) A person who provides speech and language screening services authorized by this chapter must be:

(1) appropriately licensed; or

(2) trained and monitored by a person who is appropriately licensed.

(c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.

(d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.012. RESEARCH. (a) The department may conduct research and compile statistics on the provision of remedial services to individuals with special senses and communication disorders and on the availability of those services in the state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(80), eff. June 17, 2011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(2), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(80), eff. June 17, 2011.

Sec. 36.013. FUNDING. The department may accept appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.014. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter, including contracts for the purchase of remedial services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 37. ABNORMAL SPINAL CURVATURE IN CHILDREN**

Sec. 37.001. SCREENING PROGRAM FOR ABNORMAL SPINAL CURVATURE.

(a) The department, in cooperation with the Texas Education Agency, shall establish a program to detect abnormal spinal curvature in children.

(b) The board, in cooperation with the Texas Education Agency, shall adopt rules for the mandatory spinal screening of children in grades 6 and 9 attending public or private schools. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

(c) The board shall adopt substantive and procedural rules necessary to administer screening activities.

(d) A rule adopted by the board under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.

(e) The department may coordinate the spinal screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department shall monitor the quality of screening activities provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.36, eff. Sept. 1, 1997.

Sec. 37.002. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) Each individual required by board rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual's parent, managing conservator, or guardian must submit to the chief administrator on or before the day of the screening procedure an affidavit stating the objections to screening.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the board or submits an affidavit of exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 37.003. REPORTS. (a) If the screening performed under this chapter indicates that an individual may have abnormal spinal curvature, the individual performing the screening shall fill out a report on a form prescribed by the department.

(b) The chief administrator of the school shall retain one copy of the report and shall mail one copy to the parent, managing conservator, or guardian of the individual screened.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 37.004. QUALIFICATIONS OF PERSONS PROVIDING SCREENING.

(a) The department may train persons who administer the spinal screening procedure and may approve training programs.

(b) A person who provides screening services authorized by this chapter must be:

(1) appropriately licensed or certified as a health practitioner; or

(2) certified as having completed an approved training program in screening for abnormal spinal curvature.

(c) A person who provides a professional examination authorized by this chapter for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner.

(d) It is the intent of the legislature that the department provide certification training for nonhealth practitioners through Texas Education Agency regional education service centers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.37, eff. Sept. 1, 1997.

Sec. 37.005. FUNDING. The department may accept appropriations, donations, and reimbursements and may apply those items to the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 37.006. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 39. CHILDREN'S OUTREACH HEART PROGRAM**

Sec. 39.001. DEFINITION. In this chapter, "heart disease or defect" means an abnormality or disease of the heart or major blood vessel near the heart.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM. The department, with approval of the board, may establish a children's outreach heart program to provide:

- (1) prediagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and
- (2) training to local physicians and public health nurses

in screening and diagnostic procedures for heart disease or defect.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 39.003. RULES. The board shall adopt rules it considers necessary to define the scope of the children's outreach heart program and the medical and financial standards for eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 39.004. FEES. Recipients of services or training provided by the program may be charged a fee for services or training according to rules adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 39.005. FUNDING. The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the children's outreach heart program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 39.006. CONTRACTS. The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this chapter, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 40. EPILEPSY**

Sec. 40.001. DEFINITION. In this chapter, "epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a



succession of clonic or tonic muscular spasms or other abnormal behavior.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.002. EPILEPSY PROGRAM. (a) The department, with approval of the board, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

(b) The commissioner may appoint an epilepsy advisory board to assist the department in developing the epilepsy program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.003. RULES. The board may adopt rules it considers necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.004. ADMINISTRATION. (a) The commissioner, with the approval of the board, may appoint an administrator to carry out the epilepsy program.

(b) The administrator shall report to and be under the direction of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.005. FEES. Program patients may be charged a fee for services according to rules adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.006. FUNDING. The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the epilepsy

program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 40.007. CONTRACTS. The department may enter into contracts or other agreements it considers necessary to facilitate the provision of services under this chapter, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### CHAPTER 41. HEMOPHILIA

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which a person is entitled for payment of the costs of blood, blood derivatives and concentrates, and other substances provided under this chapter, including benefits available from:

- (A) an insurance policy, group health plan, or prepaid medical or dental care plan;
- (B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sec. 1395 et seq. or 42 U.S.C. Sec. 1396 et seq.);
- (C) the Veterans Administration;
- (D) the Civilian Health and Medical Program of the Uniformed Services;
- (E) workers' compensation or any compulsory employers' insurance program;
- (F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical or dental expenses to a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The hemophilia assistance program is in the department to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products, but who are unable to pay the entire cost of the treatment.

(b) The department shall establish standards of eligibility for assistance under this chapter in accordance with Section 41.004.

(c) The department shall provide, through approved providers, financial assistance for medically eligible persons in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.003. ADMINISTRATION. (a) The commissioner may employ or appoint an administrator who shall carry out the hemophilia assistance program and report to the commissioner.

(b) The administrator may employ two persons to help carry out the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.004. FINANCIAL ELIGIBILITY. (a) A person is not eligible to receive services provided by this chapter:

(1) to the extent that another person with a legal obligation to provide for the person's care and treatment is financially able to pay for all or part of the services provided by this chapter; or

(2) to the extent that the person or a person with a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this

chapter.

(b) When the application is made under this chapter or when the services are received, the person applying for or receiving services shall inform the department of any other benefit to which the person or any other person with a legal obligation to support the person may be entitled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.005. REIMBURSEMENT. (a) The department shall require a person receiving services under this chapter who is financially able to bear part of the expense, or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear part of the expense, to pay for or reimburse the department for that part of the cost of the services provided to the person by the department.

(b) A person who has received services that are covered by some other benefit, or any other person with a legal obligation to support that person, shall reimburse the department to the extent of the services provided when the other benefit is received.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.006. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 41.005 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.007. FUNDING. (a) The department may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### CHAPTER 42. KIDNEY HEALTH CARE

Sec. 42.001. SHORT TITLE; PURPOSE. (a) This chapter may be cited as the Texas Kidney Health Care Act.

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from chronic kidney disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of chronic kidney disease.

(c) A comprehensive program to combat kidney disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Division" means the kidney health care division.

(2) "Other benefit" means a benefit, other than one provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits

available from:

- (A) an insurance policy, group health plan, or prepaid medical care plan;
- (B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);
- (C) the Veterans Administration;
- (D) the Civilian Health and Medical Program of the Uniformed Services;
- (E) workers' compensation or other compulsory employers' insurance program;
- (F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, or a hospital district; or
- (G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(3) "Serum creatinine test" is a diagnostic test of a person's blood that measures the level of creatinine present in the blood.

(4) "Estimated glomerular filtration rate" is a calculation of a person's kidney function based on:

- (A) the person's age, race, and gender; and
- (B) the results of the person's serum creatinine test.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. [2330](#)), Sec. 1, eff. September 1, 2009.

Sec. 42.003. KIDNEY HEALTH CARE DIVISION. (a) The kidney health care division is in the department to carry out this chapter. The board shall administer the division.

(b) The division may assist in the development and expansion of programs for the care and treatment of persons with chronic kidney disease, including dialysis and other lifesaving medical procedures

and techniques.

(c) The board may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.004. SERVICES. (a) The division shall provide kidney care services directly or through public or private resources to persons determined by the board to be eligible for services authorized under this chapter.

(b) The division may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The division may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by disabled or handicapped persons.

(d) The division may contract with schools, hospitals, corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with kidney disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a) Sections 483.041(a) and 483.042, Subtitle J, Title 3, Occupations Code, and other applicable laws establishing prohibitions do not apply to a dialysate, device, or drug exclusively used or necessary to perform dialysis that a physician prescribes or orders for administration or delivery to a person with chronic kidney failure if:

(1) the dialysate, device, or drug is lawfully held by a manufacturer or wholesaler registered with the board;

(2) the manufacturer or wholesaler delivers the dialysate, device, or drug to:

(A) a person with chronic kidney failure for self-administration at the person's home or a specified address, as ordered by a physician; or

(B) a physician for administration or delivery to a person with chronic kidney failure; and

(3) the manufacturer or wholesaler has sufficient and qualified supervision to adequately protect the public health.

(b) The board shall adopt rules necessary to ensure the safe distribution, without the interruption of supply, of a dialysate, device, or drug covered by Subsection (a). The rules must include provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

(c) If the board determines that a dialysate, device, or drug distributed under this chapter is ineffective or unsafe for its intended use, the board may immediately recall the dialysate, device, or drug distributed to an individual patient.

(d) A dialysate, device, or drug covered by Subsection (a) may be delivered only by:

(1) the manufacturer or wholesaler to which the physician has issued an order; or

(2) a carrier authorized to possess the dialysate, device, or drug under Section 483.041(c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 12, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.769, eff. Sept. 1, 2001.

Sec. 42.0047. ESTIMATED GLOMERULAR FILTRATION RATE REPORTING.

(a) A laboratory that performs a serum creatinine test on a sample from a person 18 years of age or older shall also calculate and include in the reported results the person's estimated glomerular filtration rate or the results of an alternative equivalent calculation measuring kidney function if the laboratory receives along with the sample all relevant clinical information about the person necessary to calculate the person's estimated glomerular



filtration rate or perform an alternative equivalent calculation. A physician requesting a serum creatinine test shall provide to the laboratory all relevant clinical information about the person necessary to calculate the person's estimated glomerular filtration rate or perform an alternative equivalent calculation unless the physician determines that the calculation is unnecessary.

(b) The requirements under Subsection (a) do not apply to:

(1) a laboratory that uses equipment to perform serum creatinine tests that cannot be reprogrammed to calculate the estimated glomerular filtration rate or perform an alternative equivalent calculation measuring kidney function; or

(2) a laboratory performing a serum creatinine test on a sample taken from a patient who is being treated in a hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. 2330), Sec. 2, eff. September 1, 2009.

Sec. 42.005. FACILITIES. (a) The board may establish and maintain standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with chronic kidney disease.

(b) The division may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with kidney disease and may prepare and submit its findings and a specific program of action.

(c) The division may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The division may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

(e) The board may provide for the establishment, supervision, management, and control of kidney care facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.006. SELECTION OF SERVICE PROVIDERS. (a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the board.

(b) The board shall provide a hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(c) The department may not terminate a contract while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is in favor of the provider.

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 42.007. ELIGIBILITY FOR SERVICES. The board may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with chronic kidney disease to receive the aid, care, or treatment provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) After notice and an opportunity for a hearing, the department for cause may deny the application of or modify, suspend, or terminate services to an applicant for or recipient of services.

(b) The program rules adopted by the board must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section

must be conducted in accordance with the board's hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 42.009. REIMBURSEMENT. (a) An applicant or recipient is not eligible to receive services provided by this chapter to the extent that the applicant or recipient, or another person with a legal obligation to support the applicant or recipient, is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When an application is made under this chapter or at any time while a person is eligible and receiving services under this chapter, the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, shall inform the department of any other benefit to which the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, may be entitled.

(c) A recipient who has received services that are covered by some other benefit, or the person with a legal obligation to support that recipient, shall reimburse the department to the extent of the cost of services provided when the other benefit is received.

(d) The board may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.010. RECOVERY OF COSTS. (a) The department may recover the costs of services provided under this chapter from a person who does not reimburse the department as required by Section 42.009(c), or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.011. FUNDING. (a) The division may receive and use gifts to carry out this chapter.

(b) The board may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

(c) The comptroller may receive all money appropriated by congress and allotted to this state for carrying out this chapter or agreements or plans authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 10.01, eff. Sept. 1, 1997.

Sec. 42.012. CONTRACTS. (a) The division may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

(b) A contract may provide for payment by the state, within the limits of funds available, for material, equipment, or services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.013. COOPERATION. (a) The division may cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with chronic kidney disease.

(b) The board shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of kidney disease or the care,

treatment, or rehabilitation of persons with kidney disease. The board may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The division may enter into reciprocal agreements with other states.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The division may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of kidney disease, including research into kidney transplantation.

(b) The division may develop techniques for an effective method of mass testing to detect kidney disease and urinary tract infections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The division may institute, carry on, and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning chronic kidney disease, including prevention and methods of care and treatment.

(b) The division may use existing public or private programs or groups for the educational programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.016. REPORTS. The board shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.017. INSURANCE PREMIUMS. The board may provide for

payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by board rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 42.018. FREEDOM OF SELECTION. The freedom of an eligible person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the board as required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 43. ORAL HEALTH IMPROVEMENT**

Sec. 43.001. SHORT TITLE. This chapter may be cited as the Texas Oral Health Improvement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.002. LIBERAL CONSTRUCTION. It is the intent of the legislature that this chapter be construed liberally so that eligible individuals may receive appropriate and adequate oral health services in a timely manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.003. DEFINITIONS. (a) In this chapter:

(1) "Dentist" means an individual licensed by the State Board of Dental Examiners to practice dentistry in this state.

(2) "Oral health services" means:

(A) preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth, jaws, gums, vestibule, tongue, cheeks, lips, floor and roof of the mouth, and adjacent masticatory structures; and

(B) oral health education and promotion activities.

(3) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for the payment of the costs of oral health treatment services, including benefits available from:

(A) an insurance policy, group oral health plan, or prepaid oral care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state; or

(G) a cause of action for the expenses of dental or oral health treatment services, or a settlement or judgment based on the cause of action, if the expenses are related to the need for treatment services provided under this chapter.

(4) "Provider" means a person who, through a contract with the department, furnishes oral health treatment services that are purchased by the department for the purposes of this chapter.

(5) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.004. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM. (a) The oral health improvement services program is in the department to provide comprehensive oral health services to eligible individuals.

(b) The board shall adopt rules to govern the program, to

prescribe the type, amount, and duration of oral health services to be provided, and, if necessary to conform to budgetary limitations, to prescribe a system of program priorities regarding the types of services to be furnished, the geographic areas to be covered, or the classes of individuals eligible for services.

(c) Except as limited by Subsection (b), the department shall develop an integrated framework for the equitable provision of oral health services throughout the state or designated geographic areas, using existing public and private health care resources when possible.

(d) The program may consist of all or any combination of the following:

- (1) treatment services for eligible individuals, including:
  - (A) emergency care for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth;
  - (B) periodontal therapy for the prevention and treatment of periodontal disease;
  - (C) endodontics to maintain aesthetics and occlusion;
  - (D) orthodontic care only in cases of severely handicapping malocclusion; and
  - (E) oral surgery and prosthetics in cases in which health is impaired;
- (2) a program of oral disease prevention, including:
  - (A) the fluoridation of community water supplies;
  - (B) fluoride mouth rinse programs in schools;
  - (C) the promotion and implementation of sealants programs; and
  - (D) the development of appropriate means for prevention of oral disease, including the continued use of recognized methods of primary, secondary, and tertiary prevention;
- (3) oral health education and promotion, including:
  - (A) public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age, and adult education programs;
  - (B) organized continuing health education training programs for health care providers; and
  - (C) preventive health education information for the public; and
- (4) facilitation of access to oral health services,



including:

(A) the improvement of the existing oral health services delivery system for the provision of services to low-income residents;

(B) outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for low-income residents; and

(C) assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state.

(e) The department may provide services only as prescribed by board rules.

(f) The services listed in Subsection (d) may be furnished either directly by the department or through a network of approved providers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.005. ADMINISTRATION. (a) The department shall:

(1) administer the program of oral health services established by the board; and

(2) adopt the design and content of all forms necessary for the program.

(b) The department may conduct field research, collect data, and prepare statistical and other reports relating to the need for and the availability of oral health services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.006. SERVICE PROVIDERS. (a) The board may adopt substantive and procedural rules relating to:

(1) the selection of dentists, physicians, facilities, and other providers to furnish program services, including criteria for the emergency selection of providers; and

(2) the denial, modification, suspension, or termination of a provider's program participation.

(b) The department shall approve providers to participate in the program according to the criteria, rules, and procedures adopted by the board.

(c) The department may pay only for program services furnished by approved providers, except in an emergency.

(d) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(e) The department shall render the final administrative decision in a due process hearing to modify, suspend, or terminate the approval of a provider.

(f) The department may not terminate a contract while a due process hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(g) Subsections (d)-(f) do not apply if a contract:

(1) is canceled by the department because of the exhaustion of funds;

(2) expires according to its terms; or

(3) is canceled because program services are restricted to conform to budgetary limitations as prescribed by Section 43.004(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES.

(a) The board may adopt substantive and procedural rules to govern the application for admission to the program and the receipt of treatment services, including the dental, financial, and other criteria for eligibility to receive treatment services.

(b) An applicant for treatment services must be referred to the program by a person who knows the individual's economic condition, such as a school administrator or school nurse, social worker, municipal or county official, dentist, physician, public health clinic, community health center, hospital, or any other source acceptable to the board.

(c) An applicant for treatment services must complete or cause to be completed an application form prescribed by the department.

(d) The application form must include or be accompanied by:

(1) a statement by the individual, or by the person with a

legal obligation to support the individual, that the individual or the person is financially unable to pay for all or part of the cost of the necessary treatment services;

(2) a statement from the referring person that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) any other assurances from the applicant or any other documentary evidence required by the board to support the applicant's eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.008. ELIGIBILITY FOR SERVICES. (a) The department shall determine an individual's eligibility for treatment services according to this chapter and the program rules.

(b) An individual is not eligible to receive treatment services provided under this chapter unless:

(1) the individual is a resident of this state;

(2) the department has determined that neither the individual nor a person with a legal obligation to support the individual is financially able to pay for all or part of the treatment services provided by this chapter;

(3) the individual complies with any other requirements stated in the program rules; and

(4) at least one licensed dentist or licensed physician has certified to the department that the dentist or physician has examined the individual and has found that:

(A) the individual meets the board's dental criteria;  
and

(B) the dentist or physician has reason to expect that the treatment services provided by or through the department will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.

(c) Except as permitted by program rules, the department may not provide treatment services before an individual's eligibility date assigned by the department or authorize payment for treatment services furnished by a provider before that date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.009. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny an application for treatment services or modify, suspend, or terminate a recipient's treatment services after notice to the applicant or recipient and the opportunity for a due process hearing.

(b) The board by rule shall provide criteria for action by the department under this section.

(c) Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of treatment services. The department shall conduct hearings in accordance with the board's due process hearing rules.

(d) The department shall render the final administrative decision in a due process hearing to deny, modify, suspend, or terminate the receipt of oral health services.

(e) This section does not apply if oral health services are restricted to conform to budgetary limitations as prescribed by Section 43.004(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 43.010. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require an individual receiving treatment services under this chapter or a person with a legal obligation to support the individual to pay for or reimburse the department for that part of the cost of the treatment services that the individual or person is financially able to pay.

(b) An individual is not eligible to receive treatment services under this chapter to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the treatment services.

(c) When the application is made under this chapter or at any time during eligibility and the receipt of treatment services, the applicant for or recipient of treatment services shall inform the department of any other benefit to which the individual or a person with a legal obligation to support the individual may be entitled.

(d) An individual who has received treatment services that are covered by some other benefit, or a person with a legal obligation to

support the individual, shall reimburse the department to the extent of the treatment services provided when the other benefit is received.

(e) The commissioner may waive the enforcement of Subsection (b) as prescribed by board rules in certain individually considered cases in which enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.011. RECOVERY OF COSTS. (a) The department may recover the cost of treatment services provided under this chapter from a person who does not pay or reimburse the department as required by this chapter or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.012. FEES. The board may charge fees for the oral health services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.013. FUNDS. (a) Subject to limitations or conditions prescribed by the legislature, the board may seek, receive, and spend funds received from any public or private source for the purposes of this chapter.

(b) The department is not required to provide oral health

services unless funds are appropriated to the department for that express purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.014. CONTRACTS. The department may enter into contracts and agreements necessary to facilitate the efficient and economical provision of oral health services under this chapter, including contracts for the purchase of services, equipment, and supplies from qualified providers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 45. DISTRIBUTION OF CHILD PASSENGER SAFETY SEAT SYSTEMS**

Sec. 45.001. DEFINITION. In this chapter, "child passenger safety seat system" has the meaning assigned by Section 545.412, Transportation Code.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.203, eff. Sept. 1, 1997.

Sec. 45.002. CHILD PASSENGER SAFETY SEAT SYSTEM PROGRAM. (a) The department may establish a program to distribute child passenger safety seat systems to indigent persons in this state.

(b) A program established under this section may distribute new or used child passenger safety seat systems that have been donated to the department for distribution.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.

Sec. 45.003. RULES. The board may adopt rules governing eligibility for a child passenger safety seat system from the program established under Section 45.002.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.

**CHAPTER 47. HEARING LOSS IN NEWBORNS**

Sec. 47.001. DEFINITIONS. In this chapter:

(1) "Birth admission" means the time after birth that a newborn remains in the birthing facility before the newborn is discharged.

(2) "Birthing facility" means:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services.

(3) "Health care provider" means a registered nurse recognized as an advanced practice nurse by the Texas Board of Nursing or a physician assistant licensed by the Texas Physician Assistant Board.

(4) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 Hz. As technological advances permit the detection of less severe hearing loss, the department may modify this definition by rule.

(5) "Infant" means a child who is at least 30 days but who is younger than 24 months old.

(6) "Intervention or follow-up care" means the early intervention services described in Part C, Individuals with Disabilities Education Act (20 U.S.C. Sections 1431-1445), as amended by Pub. L. No. 105-17.

(7) "Newborn" means a child younger than 30 days old.

(8) "Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(9) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(10) "Program" means a newborn hearing screening, tracking, and intervention program certified by the department under this chapter.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 60, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 5, eff. June 17, 2011.

Sec. 47.003. NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM. (a) A birthing facility, through a program certified by the department under Section 47.004, shall perform, either directly or through a referral to another program certified under that section, a hearing screening for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged from the facility unless:

- (1) the parent declines the screening;
- (2) the newborn or infant is transferred to another facility before the screening is performed;
- (3) the screening has previously been completed; or
- (4) the newborn was discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to a program certified under Section 47.004 at another birthing facility or operated by a physician or other health care provider.

(a-1) The birthing facility shall inform the parents during admission that:

- (1) the facility is required by law to screen a newborn or infant for hearing loss; and
- (2) the parents may decline the screening.

(b) The department or the department's designee shall approve program protocols.

(c) Subject to Section 47.008, the department shall maintain data and information on each newborn or infant who receives a hearing screening under Subsection (a).

(d) The department shall ensure that intervention is available to families for a newborn or infant identified as having hearing loss and that the intervention is managed by state programs operating under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(e) The department shall ensure that the intervention described by Subsection (d) is available for a newborn or infant identified as having hearing loss not later than the sixth month after the newborn's or infant's birth and through the time the child is an



infant unless the infant has been hospitalized since birth.

(f) If a newborn or an infant receives medical intervention services, including a hearing aid or cochlear implant, the intervention specialist shall report the results of the intervention to the department.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 586 (S.B. 793), Sec. 1, eff. June 14, 2013.

Sec. 47.0031. FOLLOW-UP SCREENING. (a) The program that performed the hearing screening under Section 47.003 shall provide the newborn's or infant's parents with the screening results. A birthing facility, through the program, shall offer a follow-up hearing screening to the parents of a newborn or infant who does not pass the screening, or refer the parents to another program for the follow-up hearing screening. The follow-up hearing screening should be performed not later than the 30th day after the date the newborn or infant is discharged from the facility.

(b) If a newborn or an infant does not pass the screening in a follow-up hearing screening, the program that performed the follow-up hearing screening on the newborn or infant shall:

(1) provide the newborn's or infant's parents with the screening results;

(2) assist in scheduling a diagnostic audiological evaluation for the newborn or infant, consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement, or refer the newborn or infant to a licensed audiologist who provides diagnostic audiological evaluations for newborns or infants that are consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement; and

(3) refer the newborn or infant to early childhood intervention services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 7, eff. June 17, 2011.

Sec. 47.0035. REFERRAL TO PROGRAM BY MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of a newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 2, eff. September 1, 2011.

Sec. 47.004. CERTIFICATION OF SCREENING PROGRAMS. (a) The department or the department's designee shall establish certification criteria for implementing a program.

(b) In order to be certified, the program must:

(1) provide hearing screening using equipment recommended by the department;

(2) use appropriate staff to provide the screening;

(3) maintain and report data electronically as required by the department;

(4) distribute family, health care provider, and physician educational materials standardized by the department;

(5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do not pass the screening; and

(6) be supervised by:

(A) a physician;

(B) an audiologist;

(C) a registered nurse; or

(D) a physician assistant.

(c) The department may certify a program that meets and maintains the certification criteria.

(d) The department may renew the certification of a program on a periodic basis as established by board rule in order to ensure quality services to newborns, infants, and families.

(e) A fee may not be charged to certify or recertify a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 8, eff. June 17, 2011.

Sec. 47.005. INFORMATION CONCERNING SCREENING RESULTS AND FOLLOW-UP CARE. (a) A birthing facility that operates a program shall distribute to the parents of each newborn or infant who is screened educational materials that are standardized by the department regarding screening results and follow-up care.

(b) A birthing facility that operates a program shall report screening results to:

(1) the parents;

(2) the newborn's or infant's attending physician, primary care physician, or other applicable health care provider; and

(3) the department.

(c) Appropriate and necessary care for the infant who needs follow-up care should be directed and coordinated by the infant's physician or health care provider, with support from appropriate ancillary services.

(d) The department may coordinate the diagnostic audiological evaluation required under Section 47.0031(b)(2). A diagnostic audiological evaluation must be completed on the newborn or infant:

(1) not later than the third month after the newborn's or infant's birth unless the newborn or infant has been hospitalized since birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) An audiologist who performs a diagnostic audiological evaluation under this chapter shall report the results of the evaluation to:

(1) the parents;

(2) the newborn's or infant's primary care physician or other applicable health care provider; and

(3) the department under Section 47.007(b).

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 9, eff. June 17, 2011.

Sec. 47.006. TECHNICAL ASSISTANCE BY DEPARTMENT. The department may consult with a birthing facility and provide to the facility technical assistance associated with the implementation of a certified program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. (a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(b) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

- (1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);
- (2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);
- (3) infants who receive follow-up care;
- (4) infants identified with hearing loss;
- (5) infants who are referred for intervention services; and
- (6) case level information necessary to report required statistics to:
  - (A) the Maternal and Child Health Bureau on an annual basis; and
  - (B) the federal Centers for Disease Control and Prevention.

(c) A birthing facility described by Subsection (a) shall

report the resulting information in the format and within the time frame specified by the department.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273  
(H.B. 411), Sec. 10

(d) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601  
(S.B. 229), Sec. 3

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

- (1) provide the services needed by the child or refer the child to a person who provides the services needed by the child; and
- (2) provide, with the consent of the child's parent, the following information to the department or the department's designee:
  - (A) results of follow-up care;
  - (B) results of audiologic testing of infants identified with hearing loss; and
  - (C) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273  
(H.B. 411), Sec. 10

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

- (1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and
- (2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:
  - (A) results of follow-up care;
  - (B) results of audiologic testing of an infant identified with hearing loss; and
  - (C) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601  
(S.B. 229), Sec. 3

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides

services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of follow-up services;
- (2) results of audiologic testing of infants identified with hearing loss; and
- (3) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273  
(H.B. 411), Sec. 10

(f) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of follow-up care;
- (2) results of audiologic testing; and
- (3) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601  
(S.B. 229), Sec. 3

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or
- (2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273  
(H.B. 411), Sec. 10

(g) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of all follow-up services for an infant who

does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section 47.003(a) for follow-up services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 3

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

- (1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);
- (2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);
- (3) infants who receive follow-up care;
- (4) infants identified with hearing loss; and
- (5) infants who are referred for intervention services.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 10, eff. June 17, 2011.

Sec. 47.008. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The information management, reporting, and tracking system provided in accordance with this chapter must meet confidentiality requirements in accordance with required state and federal privacy guidelines.

(b) Data obtained through the information management, reporting, and tracking system under this chapter are for the confidential use of the department, the department's designee, and the persons or public or private entities that the department

determines are necessary to carry out the functions of the tracking system.

(c) The department by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written consent of a parent or guardian of a patient before any individually identifying information is provided to the department as set out in this chapter. The department shall permit a parent or guardian at any time to withdraw information provided to the department under this chapter.

(d) Statistical or aggregated information that is about activities conducted under this chapter and that could not be used to individually identify a newborn, infant, or patient or a parent or guardian of a newborn, infant, or patient is not confidential.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.771, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 880, Sec. 1, eff. June 20, 2003.

Sec. 47.009. IMMUNITY FROM LIABILITY. A birthing facility, a clinical laboratory, an audiologist, a health care provider, a physician, a registered nurse, or any other officer or employee of a birthing facility, a laboratory, a physician, or an audiologist is not criminally or civilly liable for furnishing information in good faith to the department or its designee as required by this chapter. This section does not apply to information gathered and furnished after a parent of a newborn or infant declined screening offered through a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.010. RULEMAKING. (a) The executive commissioner of the Health and Human Services Commission may adopt rules for the department to implement this chapter.

(b) If the executive commissioner adopts rules, the executive commissioner shall consider the most current guidelines established by the Joint Committee on Infant Hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.



Sec. 47.011. DUTIES OF MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code, and includes a nurse midwife described by Section 301.152, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of the newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program and make a record of the referral.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.

## **CHAPTER 48. PROMOTORAS AND COMMUNITY HEALTH WORKERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Promotora and Community Health Worker Training and Certification Advisory Committee.

(2) "Commission" means the Health and Human Services Commission.

(3) "Commissioner" means the commissioner of state health services.

(4) "Compensation" includes receiving payment or receiving reimbursement for expenses.

(5) "Department" means the Department of State Health Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Promotora" or "community health worker" means a person who, with or without compensation, provides a liaison between health care providers and patients through activities that may include activities such as assisting in case conferences, providing patient education, making referrals to health and social services, conducting needs assessments, distributing surveys to identify barriers to health care delivery, making home visits, and providing bilingual

language services.

Added by Acts 1999, 76th Leg., ch. 857, Sec. 2.01, eff. Sept. 1, 1999. Renumbered from Sec. 46.001 and amended by Acts 2001, 77th Leg., ch. 946, Sec. 1, eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(72), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

**SUBCHAPTER B. TRAINING AND REGULATION OF PROMOTORAS AND COMMUNITY HEALTH WORKERS**

Sec. 48.051. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING PROGRAM. (a) The department shall establish and operate a program designed to train and educate persons who act as promotoras or community health workers. In establishing the training program, the department, to the extent possible, shall consider the applicable recommendations of the advisory committee.

(b) Participation in a training and education program established under this section is voluntary for a promotora or community health worker who provides services without receiving any compensation and mandatory for a promotora or community health worker who provides services for compensation. The executive commissioner may adopt rules to exempt a promotora or community health worker from mandatory training who has served for three or more years or who has 1,000 or more hours of experience.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.052. CERTIFICATION PROGRAM FOR PROMOTORAS AND COMMUNITY HEALTH WORKERS. (a) The department shall establish and operate a certification program for persons who act as promotoras or community health workers. In establishing the program, the executive commissioner shall adopt rules that provide minimum standards and guidelines, including participation in the training and education program under Section 48.051, for issuance of a certificate to a person under this section. In adopting the minimum standards and

guidelines, the executive commissioner shall consider the applicable recommendations of the advisory committee.

(b) Receipt of a certificate issued under this section may not be a requirement for a person to act as a promotora or community health worker without receiving any compensation and is a requirement for a person to act as a promotora or community health worker for compensation.

(c) The commission shall require health and human services agencies to use certified promotoras to the extent possible in health outreach and education programs for recipients of medical assistance under Chapter 32, Human Resources Code.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.053. RULES. The executive commissioner shall adopt rules for the administration of this subchapter.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER C. MAXIMIZING BENEFITS FROM EMPLOYMENT OF PROMOTORAS AND COMMUNITY HEALTH WORKERS**

Sec. 48.101. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING AND CERTIFICATION ADVISORY COMMITTEE. (a) The department shall establish a statewide Promotora and Community Health Worker Training and Certification Advisory Committee composed of representatives from relevant entities appointed by the commissioner. The commissioner shall appoint a member of the advisory committee as presiding officer of the advisory committee.

(b) The advisory committee shall:

(1) advise the department and the commission on the implementation of standards, guidelines, and requirements under this chapter that relate to the training and regulation of promotoras and community health workers;

(2) advise the department on matters related to the employment and funding of promotoras and community health workers;

and

(3) provide to the department recommendations for a sustainable program for promotoras and community health workers consistent with the purposes of this subchapter.

(c) Chapter 2110, Government Code, applies to the advisory committee.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

**SUBTITLE C. PROGRAMS PROVIDING HEALTH CARE BENEFITS AND SERVICES**

**CHAPTER 61. INDIGENT HEALTH CARE AND TREATMENT ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 61.001. SHORT TITLE. This chapter may be cited as the Indigent Health Care and Treatment Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.002. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Health.

(2) "Eligible county resident" means an eligible resident of a county who does not reside in the service area of a public hospital or hospital district.

(3) "Eligible resident" means a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides.

(4) "Emergency services" has the meaning assigned by Chapter 773.

(5) "General revenue levy" means:

(A) the property taxes imposed by a county that are not dedicated to:

(i) the construction and maintenance of farm-to-market roads under Article VIII, Section 1-a, Texas Constitution;

(ii) flood control under Article VIII, Section 1-a, Texas Constitution;

(iii) the further maintenance of the public roads under Article VIII, Section 9, Texas Constitution; or

(iv) the payment of principal or interest on county debt; and

(B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

(6) "Governmental entity" includes a county, municipality, or other political subdivision of the state, but does not include a hospital district or hospital authority.

(7) "Hospital district" means a hospital district created under the authority of Article IX, Sections 4-11, of the Texas Constitution.

(8) "Mandated provider" means a person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents, including the primary teaching hospital of a state medical school located in a county which does not have a public hospital or hospital district, and the faculty members practicing in both the inpatient and outpatient care facilities affiliated with the teaching hospital.

(9) "Medicaid" means the medical assistance program provided under Chapter 32, Human Resources Code.

(10) "Public hospital" means a hospital owned, operated, or leased by a governmental entity, except as provided by Section 61.051.

(11) "Service area" means the geographic region in which a governmental entity, public hospital, or hospital district has a legal obligation to provide health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.119, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.01, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1295 (H.B. [2315](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. [1233](#)), Sec. 16, eff. June 17, 2011.

Sec. 61.003. RESIDENCE. (a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Intent to reside may be evidenced by any relevant information, including:

(1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;

(2) voting records;

(3) automobile registration;

(4) Texas driver's license or other official identification;

(5) enrollment of children in a public or private school;  
or

(6) payment of property tax.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this chapter, a person who is an inmate or resident of a state school or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas Youth Commission, Texas School for the Blind, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.091, eff. September 1, 2009.

Sec. 61.004. RESIDENCE OR ELIGIBILITY DISPUTE. (a) If a provider of assistance and a governmental entity or hospital district cannot agree on a person's residence or whether a person is eligible for assistance under this chapter, the provider or the governmental entity or hospital district may submit the matter to the department.

(b) The provider of assistance and the governmental entity or hospital district shall submit all relevant information to the department in accordance with the application, documentation, and verification procedures established by the department under Section 61.006.

(c) If the department determines that another governmental entity or hospital district may be involved in the dispute, the department shall notify the governmental entity or hospital district and allow the governmental entity or hospital district to respond.

(d) From the information submitted, the department shall determine the person's residence or whether the person is eligible for assistance under this chapter, as appropriate, and shall notify each governmental entity or hospital district and the provider of assistance of the decision and the reasons for the decision.

(e) If a governmental entity, hospital district, or provider of assistance does not agree with the department's decision, the governmental entity, hospital district, or provider of assistance may file an appeal with the department. The appeal must be filed not later than the 30th day after the date on which the governmental entity, hospital district, or provider of assistance receives notice of the decision.

(f) The department shall issue a final decision not later than the 45th day after the date on which the appeal is filed.

(g) A governmental entity, hospital district, or provider of assistance may appeal the final order of the department under Chapter 2001, Government Code, using the substantial evidence rule on appeal.

(h) Service may not be denied pending an administrative or judicial review of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.02, eff. Sept. 1, 1999.

## Sec. 61.0045. INFORMATION NECESSARY TO DETERMINE ELIGIBILITY.

(a) Any provider, including a mandated provider, public hospital, or hospital district, that delivers health care services to a patient who the provider suspects is an eligible resident of the service area of a county, hospital district, or public hospital under this chapter may require the patient to:

(1) provide any information necessary to establish that the patient is an eligible resident of the service area of the county, hospital district, or public hospital; and

(2) authorize the release of any information relating to the patient, including medical information and information obtained under Subdivision (1), to permit the provider to submit a claim to the county, hospital district, or public hospital that is liable for payment for the services as described by Section 61.033 or 61.060.

(b) A county, hospital district, or public hospital that receives information obtained under Subsection (a) shall use the information to determine whether the patient to whom services were provided is an eligible resident of the service area of the county, hospital district, or public hospital and, if so, shall pay the claim made by the provider to the extent that the county, hospital district, or public hospital is liable under Section 61.033 or 61.060.

(c) The application, documentation, and verification procedures established by the department for counties under Section 61.006 may include a standard format for obtaining information under Subsection (a) to facilitate eligibility and residence determinations.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 1, eff. September 1, 2009.

Sec. 61.005. CONTRIBUTION TOWARD COST OF ASSISTANCE. (a) A county, public hospital, or hospital district may request an eligible resident receiving health care assistance under this chapter to contribute a nominal amount toward the cost of the assistance.

(b) The county, public hospital, or hospital district may not deny or reduce assistance to an eligible resident who cannot or



refuses to contribute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.006. STANDARDS AND PROCEDURES. (a) The department shall establish minimum eligibility standards and application, documentation, and verification procedures for counties to use in determining eligibility under this chapter.

(b) The minimum eligibility standards must incorporate a net income eligibility level equal to 21 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(b-1) Expired.

(b-2) Repealed by Acts 2001, 77th Leg., ch. 1128, Sec. 7, eff. Sept. 1, 2001.

(c) The department shall also define the services and establish the payment standards for the categories of services listed in Sections 61.028(a) and 61.0285 in accordance with Texas Department of Human Services rules relating to the Temporary Assistance for Needy Families-Medicaid program.

(d) The department shall establish application, documentation, and verification procedures that are consistent with the analogous procedures used to determine eligibility in the Temporary Assistance for Needy Families-Medicaid program. Except as provided by Section 61.008(a)(6), the department may not adopt a standard or procedure that is more restrictive than the Temporary Assistance for Needy Families-Medicaid program or procedures.

(e) The department shall ensure that each person who meets the basic income and resources requirements for Temporary Assistance for Needy Families program payments but who is categorically ineligible for Temporary Assistance for Needy Families will be eligible for assistance under Subchapter B. Except as provided by Section 61.023(b), the department by rule shall also provide that a person who receives or is eligible to receive Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits is not eligible for assistance under Subchapter B even if the person has exhausted a part or all of that person's benefits.

(f) The department shall notify each county and public hospital of any change to department rules that affect the provision of

services under this chapter.

(g) Notwithstanding Subsection (a), (b), or (c) or any other provision of law, the department shall permit payment to a licensed dentist for services provided under Sections 61.028(a)(4) and (6) if the dentist can provide those services within the scope of the dentist's license.

(h) Notwithstanding Subsection (a), (b), or (c), the department shall permit payment to a licensed podiatrist for services provided under Sections 61.028(a)(4) and (6), if the podiatrist can provide the services within the scope of the podiatrist's license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.09(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 15, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.120, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 1, 7 eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 1, eff. May 28, 2011.

Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The department by rule shall require each applicant to provide at least the following information:

- (1) the applicant's full name and address;
- (2) the applicant's social security number, if available;
- (3) the number of persons in the applicant's household, excluding persons receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits;
- (4) the applicant's county of residence;
- (5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;
- (6) any transfer of title to real property that the applicant has made in the preceding 24 months;
- (7) the applicant's annual household income, excluding the income of any household member receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits; and
- (8) the amount of the applicant's liquid assets and the

equity value of the applicant's car and real property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 61.008. ELIGIBILITY RULES. (a) The department by rule shall provide that in determining eligibility:

(1) a county may not consider the value of the applicant's homestead;

(2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines;

(4) a county must consider as a resource real property other than a homestead and, except as provided by Subsection (b), must count that property in determining eligibility;

(5) if an applicant transferred title to real property for less than market value to become eligible for assistance under this chapter, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property is transferred; and

(6) if an applicant is a sponsored alien, a county may include in the income and resources of the applicant:

(A) the income and resources of a person who executed an affidavit of support on behalf of the applicant; and

(B) the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

(b) A county may disregard the applicant's real property if the applicant agrees to an enforceable obligation to reimburse the county for all or part of the benefits received under this chapter. The county and the applicant may negotiate the terms of the obligation.

(c) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 2, eff. May 28, 2011.

Sec. 61.009. REPORTING REQUIREMENTS. (a) The department shall establish uniform reporting requirements for governmental entities that own, operate, or lease public hospitals providing assistance under this chapter and for counties.

(b) The reports must include information relating to:

(1) expenditures for and nature of hospital and health care provided to eligible residents;

(2) eligibility standards and procedures established by counties and governmental entities that own, operate, or lease public hospitals; and

(3) relevant characteristics of eligible residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.121, eff. Sept. 1, 1995.

Sec. 61.010. DEDICATED TAX REVENUES. If the governing body of a governmental entity adopts a property tax rate that exceeds the rate calculated under Section 26.04, Tax Code, by more than eight percent, and if a portion of the tax rate was designated to provide revenue for indigent health care services required by this chapter, the revenue produced by the portion of the tax rate designated for that purpose may be spent only to provide indigent health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state hospital or clinic shall be entitled to payment for services rendered to an eligible resident under the provisions of this chapter applicable to other providers. The department may adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.05, eff. Sept. 1,

1999.

Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.16(a), eff. September 28, 2011.

**SUBCHAPTER B. COUNTY RESPONSIBILITY FOR PERSONS NOT RESIDING IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT**

Sec. 61.021. APPLICATION OF SUBCHAPTER. This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.022. COUNTY OBLIGATION. (a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.0221. AUTHORITY RELATING TO OTHER ASSISTANCE PROGRAMS. This subchapter does not affect the authority of the commissioners court of a county to provide eligibility standards or other requirements relating to assistance programs or services that are not covered by this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 13.11(g), eff. Sept. 1, 1999.

Sec. 61.023. GENERAL ELIGIBILITY PROVISIONS. (a) A person is eligible for assistance under this subchapter if:

- (1) the person does not reside in the service area of a public hospital or hospital district;
- (2) the person meets the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; and
- (3) no other adequate source of payment exists.

(b) A county may use a less restrictive standard of eligibility for residents than prescribed by Subsection (a). A county may credit toward eligibility for state assistance under this subchapter the services provided to each person who is an eligible resident under a standard that incorporates a net income eligibility level that is less than 50 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(c) A county may contract with the department to perform eligibility determination services.

(d) Not later than the beginning of a state fiscal year, the county shall adopt the eligibility standards it will use during that fiscal year and shall make a reasonable effort to notify the public of the standards. The county may change the eligibility standards to make them more or less restrictive than the preceding standards, but the standards may not be more restrictive than the standards established by the department under Section 61.006.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(a), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.06, eff. Sept. 1, 1999.

Sec. 61.024. COUNTY APPLICATION PROCEDURE. (a) A county shall adopt an application procedure.

(b) The county may use the application, documentation, and verification procedures established by the department under Sections 61.006 and 61.007 or may use a less restrictive application, documentation, or verification procedure.

(c) Not later than the beginning of a state fiscal year, the county shall specify the procedure it will use during that fiscal year to verify eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the application procedure.

(d) The county shall furnish an applicant with written application forms.

(e) On request of an applicant, the county shall assist the applicant in filling out forms and completing the application process. The county shall inform an applicant of the availability of assistance.

(f) The county shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(g) The county shall explain to the applicant that if the application is approved, the applicant must report to the county any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The county shall explain the possible penalties for failure to report a change.

(h) The county shall review each application and shall accept or deny the application not later than the 14th day after the date on which the county receives the completed application.

(i) The county shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(j) The county shall provide an applicant written notification of the county's decision. If the county denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(k) The county shall maintain the records relating to an application at least until the end of the third complete state fiscal

year following the date on which the application is submitted.

(1) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.025. COUNTY AGREEMENT WITH MUNICIPALITY. (a) This section applies to a municipality that has a population of less than 15,000, that owns, operates, or leases a hospital, and that has made a transfer agreement before August 31, 1989, by the adoption of an ordinance, resolution, or order by the commissioners court and the governing body of the municipality.

(b) The transfer agreement may transfer partial responsibility to the county under which the municipal hospital continues to provide health care services to eligible residents of the municipality, but the county agrees to assume the hospital's responsibility to reimburse other providers who provide:

(1) mandatory inpatient or outpatient services to eligible residents that the municipal hospital cannot provide; or

(2) emergency services to eligible residents.

(c) The hospital is a public hospital for the purposes of this chapter, but it does not have a responsibility to provide reimbursement for services it cannot provide or for emergency services provided in another facility.

(d) Expenditures made by the county under Subsection (b) may be credited toward eligibility for state assistance under this subchapter if the person who received the health care services meets the eligibility standards established under Section 61.052 and would have been eligible for assistance under the county program if the person had not resided in a public hospital's service area.

(e) The agreement to transfer partial responsibility to a county under this section must take effect on a September 1 that occurs not later than two years after the date on which the county and municipality agree to the transfer. A county and municipality may not revoke or amend an agreement made under this section, except that the county may revoke or amend the agreement if a hospital district is created after the effective date of the agreement and the boundaries of the district cover all or part of the county.



(f) The county, the hospital, and any other entity in the county that provides services under this chapter shall adopt coordinated application and eligibility verification procedures. In establishing the coordinated procedures, the county and other entities shall focus on facilitating the efficient and timely referral of residents to the proper entity in the county. In addition, the procedures must comply with the requirements of Sections 61.024 and 61.053. Expenditures made by a county in establishing the coordinated procedures prescribed by this section may not be credited toward eligibility for state assistance under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 1.07, eff. Sept. 1, 1999.

Sec. 61.026. REVIEW OF ELIGIBILITY. A county shall review at least once every six months the eligibility of a resident for whom an application for assistance has been granted and who has received assistance under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.027. CHANGE IN ELIGIBILITY STATUS. (a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.028. BASIC HEALTH CARE SERVICES. (a) A county shall, in accordance with department rules adopted under Section 61.006,

provide the following basic health care services:

- (1) primary and preventative services designed to meet the needs of the community, including:
  - (A) immunizations;
  - (B) medical screening services; and
  - (C) annual physical examinations;
- (2) inpatient and outpatient hospital services;
- (3) rural health clinics;
- (4) laboratory and X-ray services;
- (5) family planning services;
- (6) physician services;
- (7) payment for not more than three prescription drugs a month; and
- (8) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance, except as provided by Section 61.0285.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 61.0285. OPTIONAL HEALTH CARE SERVICES. (a) In addition to basic health care services provided under Section 61.028, a county may, in accordance with department rules adopted under Section 61.006, provide other medically necessary services or supplies that the county determines to be cost-effective, including:

- (1) ambulatory surgical center services;
- (2) diabetic and colostomy medical supplies and equipment;
- (3) durable medical equipment;
- (4) home and community health care services;
- (5) social work services;
- (6) psychological counseling services;
- (7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists;
- (8) dental care;
- (9) vision care, including eyeglasses;
- (10) services provided by federally qualified health

centers, as defined by 42 U.S.C. Section 1396d(1)(2)(B);

(11) emergency medical services;

(12) physical and occupational therapy services; and

(13) any other appropriate health care service identified by department rule that may be determined to be cost-effective.

(b) A county must notify the department of the county's intent to provide services specified by Subsection (a). If the services are approved by the department under Section 61.006, or if the department fails to notify the county of the department's disapproval before the 31st day after the date the county notifies the department of its intent to provide the services, the county may credit the services toward eligibility for state assistance under this subchapter.

(c) A county may provide health care services that are not specified in Subsection (a), or may provide the services specified in Subsection (a) without actual or constructive approval of the department, but may not credit the services toward eligibility for state assistance.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.09, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 24, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 947 (H.B. 871), Sec. 1, eff. September 1, 2011.

Sec. 61.029. PROVISION OF HEALTH CARE SERVICES. (a) A county may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The county may affiliate with other governmental entities or with a public hospital or hospital district to provide regional administration and delivery of health care services.

(c) A county may provide or arrange to provide health care services for eligible county residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 2, eff. September 1, 2009.

Sec. 61.030. MANDATED PROVIDER. A county may select one or more providers of health care services. The county may require eligible county residents to obtain care from a mandated provider except:

- (1) in an emergency;
- (2) when medically inappropriate; or
- (3) when care is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.031. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A county may require any provider, including a mandated provider, to obtain approval from the county before providing nonemergency health care services to an eligible county resident.

(b) If the county does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects may be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that health care services have been or will be provided to the patient. The notice shall be made:

- (1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and
- (2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county of residence.

(c) If the provider knows that the patient's county of residence has selected a mandated provider or if, after contacting the patient's county of residence, that county requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the patient's county of residence receives sufficient information to determine eligibility, the county shall determine if the patient is

eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 61.032. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES.

(a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county of residence.

(b) The provider shall attempt to determine the patient's county of residence when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the county of which the patient is presumed to be a resident in determining if the patient is an eligible resident of that county.

(d) Not later than the 14th day after the date on which the patient's county of residence receives notification and sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If the county and the provider disagree on the patient's residence or eligibility, the county or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2001.

Sec. 61.033. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a county is liable for health care services provided under this subchapter by any provider, including a public hospital or hospital district, to an eligible county resident. A county is not liable for payment for health care services provided:

(1) by any provider, including a public hospital or hospital district, to a resident of that county who resides in the service area of a public hospital or hospital district; or

(2) to an eligible resident of that county who does not reside within the service area of a public hospital or hospital district by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) To the extent prescribed by this chapter, if another source of payment does not adequately cover a health care service a county provides to an eligible county resident, the county shall pay for or provide the health care service for which other payment is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.034. PAYMENT STANDARDS FOR HEALTH CARE SERVICES. (a) A county is not liable for the cost of a health care service provided under Section 61.028 or 61.0285 that is in excess of the payment standards for that service established by the department under Section 61.006.

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.12, eff. Sept. 1, 1999.

Sec. 61.035. LIMITATION OF COUNTY LIABILITY. The maximum county liability for each state fiscal year for health care services provided by all assistance providers, including a hospital and a skilled nursing facility, to each eligible county resident is:

- (1) \$30,000; or
- (2) the payment of 30 days of hospitalization or treatment in a skilled nursing facility, or both, or \$30,000, whichever occurs first, if the county provides hospital or skilled nursing facility services to the resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.036. DETERMINATION OF ELIGIBILITY FOR PURPOSES OF STATE ASSISTANCE. (a) A county may not credit an expenditure made to assist an eligible county resident toward eligibility for state assistance under this subchapter unless the county complies with the department's application, documentation, and verification procedures.

(b) Except as provided by Section 61.023(b), a county may not credit an expenditure for an applicant toward eligibility for state assistance if the applicant does not meet the department's eligibility standards.

(c) Regardless of the application, documentation, and verification procedures or eligibility standards established by the department under Subchapter A, a county may credit an expenditure for an eligible resident toward eligibility for state assistance if the eligible resident received the health care services at:

- (1) a hospital maintained or operated by a state agency that has a contract with the county to provide health care services;
- (2) a federally qualified health center delivering federally qualified health center services, as those terms are defined in 42 U.S.C. Sections 1396d(1)(2)(A) and (B), that has a contract with the county to provide health care services; or
- (3) a hospital or other health care provider if the eligible resident is an inmate of a county jail or another county correctional facility.

(d) Regardless of the application, documentation, and verification procedures or eligibility standards established by the department under Subchapter A, a county may credit an intergovernmental transfer to the state toward eligibility for state assistance if the transfer was made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver issued under 42 U.S.C. Section 1315.

(e) A county may credit toward eligibility for state assistance intergovernmental transfers made under Subsection (d) that in the aggregate do not exceed four percent of the county's general revenue levy in any state fiscal year, provided:

(1) the commissioners court determines that the expenditure fulfills the county's obligations to provide indigent health care under this chapter;

(2) the commissioners court determines that the amount of care available through participation in the waiver is sufficient in type and amount to meet the requirements of this chapter; and

(3) the county receives periodic reports from health care providers that receive supplemental or incentive payments under the Texas Healthcare Transformation and Quality Improvement Program waiver that document the number and types of services provided to persons who are eligible to receive services under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(b), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.13, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1133 (H.B. 2618), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1007 (H.B. 2454), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1176 (S.B. 872), Sec. 1, eff. June 14, 2013.

Sec. 61.037. COUNTY ELIGIBILITY FOR STATE ASSISTANCE. (a) The department may distribute funds as provided by this subchapter to eligible counties to assist the counties in providing health care services under Sections 61.028 and 61.0285 to their eligible county residents.



(b) Except as provided by Subsection (c), (d), (e), or (g), to be eligible for state assistance, a county must:

(1) spend in a state fiscal year at least eight percent of the county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) notify the department, not later than the seventh day after the date on which the county reaches the expenditure level, that the county has spent at least six percent of the applicable county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023.

(c) If a county and a health care provider signed a contract on or before January 1, 1985, under which the provider agrees to furnish a certain level of health care services to indigent persons, the value of services furnished in a state fiscal year under the contract is included as part of the computation of a county expenditure under this section if the value of services does not exceed the payment rate established by the department under Section 61.006.

(d) If a hospital district is located in part but not all of a county, that county's appraisal district shall determine the taxable value of the property located inside the county but outside the hospital district. In determining eligibility for state assistance, that county shall consider only the county general revenue levy resulting from the property located outside the hospital district. A county is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight percent of the county general revenue levy for that year resulting from the property located outside the hospital district to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) the county complies with the other requirements of this subchapter.

(e) A county that provides health care services described by Subsection (a) to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight

percent of the county general revenue levy for the year to provide the health care services to its eligible county residents who qualify for assistance under Section 61.052; and

(2) the county complies with the requirements of this subchapter.

(f) If a county anticipates that it will reach the eight percent expenditure level, the county must notify the department as soon as possible before the anticipated date on which the county will reach the level.

(g) The department may waive the requirement that the county meet the minimum expenditure level imposed by Subsection (b), (d), or (e) and provide state assistance under this chapter at a lower level determined by the department if the county demonstrates, through an appropriate actuarial analysis, that the county is unable to satisfy the eight percent expenditure level:

(1) because, although the county's general revenue tax levy has increased significantly, expenditures for health care services described by Subsection (a) have not increased by the same percentage;

(2) because the county is at the maximum allowable ad valorem tax rate, has a small population, or has insufficient taxable property; or

(3) because of a similar reason.

(h) The department shall adopt rules governing the circumstances under which a waiver may be granted under Subsection (g) and the procedures to be used by a county to apply for the waiver. The procedures must provide that the department shall make a determination with respect to an application for a waiver not later than the 90th day after the date the application is submitted to the department in accordance with the procedures established by the department. To be eligible for state assistance under Subsection (g), a county must submit monthly financial reports, in the form required by the department, covering the 12-month period preceding the date on which the assistance is sought.

(i) The county must give the department all necessary information so that the department can determine if the county meets the requirements of Subsection (b), (d), (e), or (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 651, Sec. 1, eff. June 11, 1997; Acts

1999, 76th Leg., ch. 272, Sec. 1, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.038. DISTRIBUTION OF ASSISTANCE FUNDS. (a) If the department determines that a county is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing health care services under Sections 61.028 and 61.0285 to its eligible county residents who qualify for assistance as described by Section 61.037.

(b) State funds provided under this section to a county must be equal to at least 90 percent of the actual payment for the health care services for the county's eligible residents during the remainder of the state fiscal year after the eight percent expenditure level is reached.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 272, Sec. 2, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.039. FAILURE TO PROVIDE STATE ASSISTANCE. If the department fails to provide assistance to an eligible county as prescribed by Section 61.038, the county is not liable for payments for health care services provided to its eligible county residents after the county reaches the eight percent expenditure level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.0395. LIMITED TO APPROPRIATED FUNDS. (a) The total amount of state assistance provided to counties under this chapter for a fiscal year may not exceed the amount appropriated for that purpose for that fiscal year.

(b) The department may adopt rules governing the distribution of state assistance under this chapter that establish a maximum annual allocation for each county eligible for assistance under this chapter in compliance with Subsection (a).

(c) The rules adopted under this section:

(1) may consider the relative populations of the service areas of eligible counties and other appropriate factors; and

(2) notwithstanding Subsection (b), may provide for, at the end of each state fiscal year, the reallocation of all money that is allocated to a county under Subsection (b) but that the county is not eligible to receive and the distribution of that money to other eligible counties.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.15, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1128, Sec. 3, eff. Sept. 1, 2001.

Sec. 61.040. TAX INFORMATION. The comptroller shall give the department information relating to:

(1) the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period; and

(2) the amount of sales and use tax revenue received by each county for the relevant period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 64, eff. Sept. 1, 1991.

Sec. 61.041. COUNTY REPORTING. (a) The department shall establish monthly reporting requirements for a county seeking state assistance and establish procedures necessary to determine if the county is eligible for state assistance.

(b) The department shall establish requirements relating to:

(1) documentation required to verify the eligibility of residents to whom the county provides assistance; and

(2) county expenditures for health care services under Sections 61.028 and 61.0285.

(c) The department may audit county records to determine if the county is eligible for state assistance.

(d) The department shall establish annual reporting requirements for each county that is required to provide indigent health care under this chapter but that is not required to report under Subsection (a). A county satisfies the annual reporting

requirement of this subsection if the county submits information to the department as required by law to obtain an annual distribution under the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.16, eff. Sept. 1, 1999.

Sec. 61.042. EMPLOYMENT SERVICES PROGRAM. (a) A county may establish procedures consistent with those used by the Texas Department of Human Services under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Employment Commission.

(b) The county shall notify all persons with pending applications and eligible residents of the employment service program requirements not less than 30 days before the program is established.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.122, eff. Sept. 1, 1995.

Sec. 61.043. PREVENTION AND DETECTION OF FRAUD. (a) The county shall adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a county for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.044. SUBROGATION. (a) The filing of an application for or receipt of services constitutes an assignment of the

applicant's or recipient's right of recovery from:

- (1) personal insurance;
- (2) other sources; or
- (3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives services shall inform the county, at the time of application or at any time during eligibility, of any unsettled tort claim that may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. An applicant or eligible resident shall inform the county of any injury that is caused by the act or failure to act of some other person. An applicant or eligible resident shall inform the county as required by this subsection within 10 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(d) A separate and distinct cause of action in favor of the county is hereby created, and the county may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent on any other action.

(e) The county's right of recovery is limited to the amount of the cost of services paid by the county. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) An applicant or eligible resident who knowingly and intentionally fails to disclose the information required by Subsection (b) commits a Class C misdemeanor.

(g) An applicant or eligible resident is subject to denial of services under this chapter following an administrative hearing.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER C. PERSONS WHO RESIDE IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT**

Sec. 61.051. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to health care services and assistance provided to a person who resides in the service area of a public hospital or hospital

district.

(b) For the purposes of this subchapter, a hospital is not considered to be a public hospital and is not responsible for providing care under this subchapter if the hospital:

(1) is owned, operated, or leased by a municipality with a population of less than 5,500;

(2) was leased before January 1, 1981, by a municipality that at the time of the lease did not have a legal obligation to provide indigent health care; or

(3) was established under Section 265.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 16, eff. Sept. 1, 1991.

Sec. 61.052. GENERAL ELIGIBILITY PROVISIONS. (a) A public hospital or hospital district shall provide health care assistance to each eligible resident in its service area who meets:

(1) the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; or

(2) a less restrictive income and resources standard adopted by the hospital or hospital district serving the area in which the person resides.

(b) If a public hospital used an income and resources standard during the operating year that ended before January 1, 1985, that was less restrictive than the income and resources requirements established by the department under Section 61.006, the hospital shall adopt that standard to determine eligibility under this subchapter.

(c) If a public hospital did not use an income and resources standard during the operating year that ended before January 1, 1985, but had a Hill-Burton obligation during part of that year, the hospital shall adopt the standard the hospital used to meet the Hill-Burton obligation to determine eligibility under this subchapter.

(d) A public hospital established after September 1, 1985, shall provide health care services to each resident who meets the income and resources requirements established by the department under Sections 61.006 and 61.008, or the hospital may adopt a less restrictive income and resources standard. The hospital may adopt a

less restrictive income and resources standard at any time.

(e) If because of a change in the income and resources requirements established by the department under Sections 61.006 and 61.008 the standard adopted by a public hospital or hospital district becomes stricter than the requirements established by the department, the hospital or hospital district shall change its standard to at least comply with the requirements established by the department.

(f) A public hospital or hospital district may contract with the department to perform eligibility determination services.

(g) A county that provides health care services to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 and that establishes an income and resources standard in accordance with Subsection (a)(2) may credit the services provided to all persons who are eligible under that standard toward eligibility for state assistance as described by Section 61.037(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 61.053. APPLICATION PROCEDURE. (a) A public hospital or hospital district shall adopt an application procedure.

(b) Not later than the beginning of a public hospital's or hospital district's operating year, the hospital or district shall specify the procedure it will use during the operating year to determine eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the procedure.

(c) The public hospital or hospital district shall furnish an applicant with written application forms.

(d) On request of an applicant, the public hospital or hospital district shall assist an applicant in filling out forms and completing the application process. The hospital or district shall inform an applicant of the availability of assistance.

(e) The public hospital or hospital district shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(f) The public hospital or hospital district shall explain to the applicant that if the application is approved, the applicant must



report to the hospital or district any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The hospital or district shall explain the possible penalties for failure to report a change.

(g) The public hospital or hospital district shall review each application and shall accept or deny the application not later than the 14th day after the date on which the hospital or district receives the completed application.

(h) The public hospital or hospital district shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(i) The public hospital or hospital district shall provide an applicant written notification of the hospital's or district's decision. If the hospital or district denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.054. BASIC HEALTH CARE SERVICES PROVIDED BY A PUBLIC HOSPITAL. (a) Except as provided by Subsection (c), a public hospital shall endeavor to provide the basic health care services a county is required to provide under Section 61.028.

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the hospital was not providing on January 1, 1999, but only to the extent the hospital is financially able to do so.

(d) A public hospital may provide health care services in addition to basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.18, eff. Sept. 1, 1999.

Sec. 61.055. BASIC HEALTH CARE SERVICES PROVIDED BY HOSPITAL DISTRICTS. (a) Except as provided by Subsection (b), a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district.

(b) A hospital district shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the district was not providing on January 1, 1999, but only to the extent the district is financially able to do so.

(c) This section may not be construed to discharge a hospital district from its obligation to provide the health care services required under the Texas Constitution and the statute creating the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.19, eff. Sept. 1, 1999.

Sec. 61.056. PROVISION OF HEALTH CARE SERVICES. (a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The public hospital or hospital district may affiliate with other public hospitals or hospital districts or with a governmental entity to provide regional administration and delivery of health care services.

(c) A hospital district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003, may affiliate with any public or private entity to provide regional administration and

delivery of health care services. The regional affiliation, in accordance with the affiliation agreement, shall use money contributed by an affiliated governmental entity to provide health care services to an eligible resident of that governmental entity.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 217  
(S.B. 1063), Sec. 3

(d) A hospital district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003, may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of managers of the district has the powers and duties provided to the commissioners court of a county under Chapter 75.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 916  
(H.B. 2963), Sec. 3

(d) A public hospital or hospital district may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of directors or managers of the hospital or district have the powers and duties provided to the commissioners court of a county under Chapter 75.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 217 (S.B. 1063), Sec. 3, eff. May 27, 2009.

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 3, eff. September 1, 2009.

Sec. 61.057. MANDATED PROVIDER. A public hospital may select one or more providers of health care services. A public hospital may require eligible residents to obtain care from a mandated provider except:

- (1) in an emergency;
- (2) when medically inappropriate; or

(3) when care is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.058. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A public hospital may require any provider, including a mandated provider, to obtain approval from the hospital before providing nonemergency health care services to an eligible resident in the hospital's service area.

(b) If the public hospital does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines that the patient resides in the hospital's service area.

(c) If the provider knows that the public hospital serving the area in which the patient resides has selected a mandated provider or if, after contacting the hospital, the hospital requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.20, eff. Sept. 1, 1999.

Sec. 61.059. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES.

(a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines that the patient resides in the hospital's service area.

(b) The provider shall attempt to determine if the patient resides in a public hospital's service area when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the public hospital in determining if the patient is an eligible resident of the hospital's service area.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If the public hospital and the provider disagree on the patient's residence or eligibility, the hospital or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(g) If emergency services are customarily available at a facility operated by a public hospital, that hospital is not liable for emergency services furnished to an eligible resident by another

provider in the area the hospital has a legal obligation to serve.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 4, eff. Sept. 1, 2001.

Sec. 61.060. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a public hospital is liable for health care services provided under this subchapter by any provider, including another public hospital, to an eligible resident in the hospital's service area. A public hospital is not liable for payment for health care services provided to:

(1) a person who does not reside in the hospital's service area; or

(2) an eligible resident of the hospital's service area by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) A hospital district is liable for health care services as provided by the Texas Constitution and the statute creating the district.

(c) A public hospital is the payor of last resort under this subchapter and is not liable for payment or assistance to an eligible resident in the hospital's service area if any other public or private source of payment is available.

(d) If another source of payment does not adequately cover a health care service a public hospital provides to an eligible resident of the hospital's service area, the hospital shall pay for or provide the health care service for which other payment is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.061. PAYMENT RATES AND LIMITS. The payment rates and limits prescribed by Sections 61.034 and 61.035 that relate to county services apply to inpatient and outpatient hospital services a public hospital is required to provide if:

(1) the hospital cannot provide the services or emergency services that are required; and

(2) the services are provided by an entity other than the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.062. RESPONSIBILITY OF GOVERNMENTAL ENTITY. A governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 61.063. PROCEDURE TO CHANGE ELIGIBILITY STANDARDS OR SERVICES PROVIDED. (a) A public hospital may not change its eligibility standards to make the standards more restrictive and may not reduce the health care services it offers unless it complies with the requirements of this section.

(b) Not later than the 90th day before the date on which a change would take effect, the public hospital must publish notice of the proposed change in a newspaper of general circulation in the hospital's service area and set a date for a public hearing on the change. The published notice must include the date, time, and place of the public meeting. The notice is in addition to the notice required by Chapter 551, Government Code.

(c) Not later than the 30th day before the date on which the change would take effect, the public hospital must conduct a public meeting to discuss the change. The meeting must be held at a convenient time in a convenient location in the hospital's service area. Members of the public may testify at the meeting.

(d) If, based on the public testimony and on other relevant information, the governing body of the hospital finds that the change would not have a detrimental effect on access to health care for the residents the hospital serves, the hospital may adopt the change. That finding must be formally adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 61.064. TRANSFER OF A PUBLIC HOSPITAL. (a) A governmental entity that owns, operates, or leases a public hospital and that closes, sells, or leases the hospital:

(1) has the obligation to provide basic health care services under this chapter;

(2) shall adopt the eligibility standards that the hospital was or would have been required to adopt; and

(3) shall provide the same services the hospital was or would have been required to provide under this chapter on the date of the closing, sale, or lease.

(b) If the governmental entity owned, operated, or leased the public hospital before January 1, 1985, and sold or leased the hospital on or after that date but before September 1, 1986, the obligation retained is the obligation the hospital would have had on September 1, 1986.

(c) Notwithstanding Subsections (a) and (b), if a hospital district that owns, operates, or leases a public hospital dissolves, the district has no responsibility under this chapter. If on or before dissolution the district sold or transferred its hospital to another governmental entity, that governmental entity assumes the district's responsibility to provide health care services in accordance with this subchapter. If the district did not sell or transfer the hospital to another governmental entity, the county shall provide health care services to the residents of the district's service area in accordance with Subchapter B.

(d) This section does not apply to a governmental entity that sold or leased a public hospital to a hospital district or a hospital authority on or after January 1, 1985, but before September 1, 1986. If a governmental entity sold or leased a hospital as provided by this subsection, the hospital ceased being a public hospital for the purposes of this chapter on the date it was sold or leased, and neither the governmental entity nor the hospital district or hospital authority has any responsibility under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 61.065. COUNTY RESPONSIBILITY FOR HOSPITAL SOLD ON OR AFTER JANUARY 1, 1988. (a) This section applies to a county that,



on or after January 1, 1988, sells to a purchaser that is not a governmental entity a county hospital that was leased at the time of the sale to a person who is not a governmental entity.

(b) On the date the hospital is sold, the hospital ceases being a public hospital for the purposes of this chapter, and the county shall provide health care services to county residents in accordance with Subchapter B.

(c) If the contract for the sale of the hospital provides for the provision by the hospital of health care services to county residents, the value of the health care services credited or paid in a state fiscal year under the contract is included as part of the computation of a county expenditure under Section 61.037 to the extent that the value of the services does not exceed the payment standard established by the department for allowed inpatient and outpatient services.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(c), eff. Sept. 1, 1989.

Sec. 61.066. PREVENTION AND DETECTION OF FRAUD. (a) A hospital district may adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a hospital district for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

(c) A hospital district may recover, from the eligible resident perpetrating a fraud, an amount equal to the value of any fraudulently obtained health care services provided to the eligible resident disqualified under this section.

Added by Acts 2001, 77th Leg., ch. 563, Sec. 1, eff. Aug. 27, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 1, eff. September 1, 2011.

Sec. 61.067. LIEN BY NON-PROVIDER HOSPITAL DISTRICT. (a) This

section applies to a hospital district that does not operate a hospital.

(b) After the hospital district pays the providing hospital for the actual cost of the service, the district may file a lien on a tort cause of action or claim of an eligible resident who receives health care services for injuries caused by an accident that is attributed to the negligence of another person.

(c) A person who applies for or receives health care services shall inform the hospital district, at the time of application or at any time during eligibility for services, of:

- (1) any unsettled tort claim that may affect medical needs;
- (2) any private accident or health insurance coverage that is or may become available; and
- (3) any injury that is caused by the act or failure to act of some other person.

(d) An applicant or eligible resident shall inform the hospital district of information required by Subsection (c) within 30 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(e) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(f)(1) A lien under this chapter attaches to:

- (A) a tort cause of action for damages arising from an injury for which the injured eligible resident receives health care services;
- (B) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the eligible resident or by another person entitled to bring the suit in case of the death of the eligible resident to recover tort damages arising from an injury for which the eligible resident receives health care services; and
- (C) the proceeds of a settlement of a tort cause of action or a tort claim by the eligible resident or another person entitled to make the claim, arising from an injury for which the eligible resident receives health care services.

(2) If the eligible resident has health insurance, the providing hospital is obligated to timely bill the applicable health insurer in accordance with Chapter 146, Civil Practice and Remedies Code.

(g) The lien does not attach to a claim under the workers'

compensation law of this state, the Federal Employees Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act.

(h) A hospital district's lien established under Subsection (b) is for the amount actually paid by the hospital district for services provided to the eligible resident for health care services caused by an accident that is attributed to the negligence of another person.

(i) To secure the lien, a hospital district must file written notice of the lien with the county clerk of the county in which the services were provided. The notice must be filed and indexed before money is paid by the third-party liability insurer. The notice must contain:

- (1) the injured individual's name and address;
- (2) the date of the accident;
- (3) the name and location of the hospital district claiming the lien; and
- (4) the name of the person alleged to be liable for damages arising from the injury, if known.

(j) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital district and shall index the record in the name of the injured individual.

(k) The procedures set forth in Sections 55.006 and 55.007, Property Code, for discharging and releasing the lien shall apply to liens filed under this section.

(l) Procedures established by a hospital district for administrative hearings under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 2, eff. September 1, 2011.

Sec. 61.068. EMPLOYMENT SERVICES PROGRAM. (a) A public hospital or hospital district may establish procedures consistent with those used by the Health and Human Services Commission under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

(b) The public hospital or hospital district shall notify each person with a pending application and all eligible residents of the

requirements of the employment services program not less than 30 days before the program is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1206 (S.B. 304), Sec. 1, eff. June 17, 2011.

Redesignated from Health and Safety Code, Section 61.067 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(24), eff. September 1, 2013.

**CHAPTER 62. CHILD HEALTH PLAN FOR CERTAIN LOW-INCOME CHILDREN**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 62.001. OBJECTIVE OF THE STATE CHILD HEALTH PLAN. The principal objective of the state child health plan is to provide primary and preventative health care to low-income, uninsured children of this state, including children with special health care needs, who are not served by or eligible for other state assisted health insurance programs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of health and human services.

(3) "Health plan provider" means an insurance company, health maintenance organization, or other entity that provides health benefits coverage under the child health plan program. The term includes a primary care case management provider network.

(4) "Net family income" means the amount of income established for a family after reduction for offsets for child care expenses, in accordance with standards applicable under the Medicaid program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.45, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 1, eff.

June 15, 2007.

Sec. 62.003. NOT AN ENTITLEMENT; TERMINATION OF PROGRAM. (a) This chapter does not establish an entitlement to assistance in obtaining health benefits for a child.

(b) The program established under this chapter terminates at the time that federal funding terminates under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, unless a successor program providing federal funding for a state-designed child health plan program is created.

(c) Unless the legislature authorizes the expenditure of other revenue for the program established under this chapter, the program terminates on the date that money obtained by the state as a result of the Comprehensive Settlement Agreement and Release filed in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, in the United States District Court, Eastern District of Texas, is no longer available to provide state funding for the program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.004. FEDERAL LAW AND REGULATIONS. The commissioner shall monitor federal legislation affecting Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and changes to the federal regulations implementing that law. If the commissioner determines that a change to Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) or the federal regulations implementing that law conflicts with this chapter, the commissioner shall report the changes to the governor, lieutenant governor, and speaker of the house of representatives, with recommendations for legislation necessary to implement the federal law or regulations, seek a waiver, or withdraw from participation.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

#### **SUBCHAPTER B. ADMINISTRATION OF CHILD HEALTH PLAN PROGRAM**

Sec. 62.051. DUTIES OF COMMISSION. (a) The commission shall develop a state-designed child health plan program to obtain health

benefits coverage for children in low-income families. The commission shall ensure that the child health plan program is designed and administered in a manner that qualifies for federal funding under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations.

(b) The commission is the agency responsible for making policy for the child health plan program, including policy related to covered benefits provided under the child health plan. The commission may not delegate this duty to another agency or entity.

(c) The commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance.

(d) The commission shall adopt rules as necessary to implement this chapter. The commission may require the Texas Department of Health, the Texas Department of Human Services, or any other health and human services agency to adopt, with the approval of the commission, any rules that may be necessary to implement the program. With the consent of another agency, including the Texas Department of Insurance, the commission may delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the program.

(e) The commission shall conduct a review of each entity that enters into a contract under Section 62.055 or Section 62.155, to ensure that the entity is available, prepared, and able to fulfill the entity's obligations under the contract in compliance with the contract, this chapter, and rules adopted under this chapter.

(f) The commission shall ensure that the amounts spent for administration of the child health plan program do not exceed any limit on those expenditures imposed by federal law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.052. DUTIES OF TEXAS DEPARTMENT OF HEALTH. (a) The commission may direct the Texas Department of Health to:

(1) implement contracts with health plan providers under Section 62.155;

(2) monitor the health plan providers, through reporting requirements and other means, to ensure performance under the contracts and quality delivery of services;

(3) monitor the quality of services delivered to enrollees through outcome measurements including:

(A) rate of hospitalization for ambulatory sensitive conditions, including asthma, diabetes, epilepsy, dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

(B) rate of hospitalization for injuries;

(C) percent of enrolled adolescents reporting risky health behavior such as injuries, tobacco use, alcohol/drug use, dietary behavior, physical activity, or other health related behaviors; and

(D) percent of adolescents reporting attempted suicide; and

(4) provide payment under the contracts to the health plan providers.

(b) The commission, or the Texas Department of Health under the direction of and in consultation with the commission, shall adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.053. DUTIES OF TEXAS DEPARTMENT OF HUMAN SERVICES. (a) Under the direction of the commission, the Texas Department of Human Services may:

(1) accept applications for coverage under the child health plan and implement the child health plan program eligibility screening and enrollment procedures;

(2) resolve grievances relating to eligibility determinations; and

(3) coordinate the child health plan program with the Medicaid program.

(b) If the commission contracts with a third party administrator under Section 62.055, the commission may direct the Texas Department of Human Services to:

(1) implement the contract;

(2) monitor the third party administrator, through reporting requirements and other means, to ensure performance under

the contract and quality delivery of services; and

(3) provide payment under the contract to the third party administrator.

(c) The commission, or the Texas Department of Human Services under the direction of and in consultation with the commission, shall adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.054. DUTIES OF TEXAS DEPARTMENT OF INSURANCE. (a) At the request of the commission, the Texas Department of Insurance shall provide any necessary assistance with the development of the child health plan. The department shall monitor the quality of the services provided by health plan providers and resolve grievances relating to the health plan providers.

(b) The commission and the Texas Department of Insurance may adopt a memorandum of understanding that addresses the responsibilities of each agency in developing the plan.

(c) The Texas Department of Insurance, in consultation with the commission, shall adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.055. CONTRACTS FOR IMPLEMENTATION OF CHILD HEALTH PLAN.

(a) It is the intent of the legislature that the commission maximize the use of private resources in administering the child health plan created under this chapter. In administering the child health plan, the commission may contract with a third party administrator to provide enrollment and related services under the state child health plan.

(b), (c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(d) A third party administrator may perform tasks under the contract that would otherwise be performed by the Texas Department of Health or Texas Department of Human Services under this chapter.

(e) The commission shall:

(1) retain all policymaking authority over the state child health plan;

(2) procure all contracts with a third party administrator



through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(3) ensure that all contracts with child health plan providers under Section 62.155 are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.43, 2.156(a)(1),  
eff. Sept. 1, 2003.

Sec. 62.056. COMMUNITY OUTREACH CAMPAIGN; TOLL-FREE HOTLINE.

(a) The commission shall conduct a community outreach and education campaign to provide information relating to the availability of health benefits for children under this chapter. The commission shall conduct the campaign in a manner that promotes enrollment in, and minimizes duplication of effort among, all state-administered child health programs.

(b) The community outreach campaign must include:

(1) outreach efforts that involve school-based health clinics;

(2) a toll-free telephone number through which families may obtain information about health benefits coverage for children; and

(3) information regarding the importance of each conservator of a child promptly informing the other conservator of the child about the child's health benefits coverage.

(c) The commission shall contract with community-based organizations or coalitions of community-based organizations to implement the community outreach campaign and shall also promote and encourage voluntary efforts to implement the community outreach campaign. The commission shall procure the contracts through a process designed by the commission to encourage broad participation of organizations, including organizations that target population groups with high levels of uninsured children.

(d) The commission may direct that the Department of State Health Services perform all or part of the community outreach campaign.

(e) The commission shall ensure that information provided under this section is available in both English and Spanish.

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 2, eff. June 15, 2007.

Sec. 62.058. FRAUD PREVENTION. The commission shall develop and implement rules for the prevention and detection of fraud in the child health plan program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission for payment on behalf of a health plan provider under the program unless the vendor has entered into a contract with the commission authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the commission and health plan providers, with an emphasis on provisions designed to prevent fraud or abuse under the program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the commission to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the commission, the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the commission or office of attorney general relating to the vendor; and

(B) if requested, copies of any records described by Paragraph (A) at no charge to the commission, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the commission shall send a remittance notice directly to the provider referenced in the claim. The notice must include detailed information regarding the claim submitted on behalf of the provider.

(d) The commission shall take all action necessary, including any modifications of the commission's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for payment under the program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) The commission shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.44(a), eff. Jan. 1, 2006.

Sec. 62.059. HEALTH INSURANCE PREMIUM ASSISTANCE PROGRAM FOR CHILDREN ELIGIBLE FOR CHILD HEALTH PLAN. (a) In this section, "group health benefit plan" means a plan described by Section 1207.001, Insurance Code.

(b) The commission shall identify children, otherwise eligible to enroll in the state child health plan under this chapter, who are eligible to enroll in a group health benefit plan.

(c) For a child identified under Subsection (b), the commission shall determine whether it is cost-effective to enroll the child in the group health benefit plan under this section. The commission may determine cost-effectiveness on an aggregate basis for the premium assistance program as a whole.

(d) If the commission determines that it is cost-effective to enroll the child in the group health benefit plan, the commission shall:

(1) inform the child and the child's parent or guardian of the availability of the premium assistance program under this section;

(2) offer, as an optional alternative to enrollment in the commission's state child health plan program, a premium assistance

payment to assist with the employee's or member's share of the required premiums for the group health benefit plan that is available to the child; and

(3) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207, Insurance Code.

(e) The commission shall determine the amount of the premium assistance payment. The premium assistance payment shall be paid only for the reimbursement of the employee's or member's share of required premiums for coverage of a child enrolled in the group health benefit plan.

(f) The premium assistance payment paid under Subsection (e) may provide assistance for the payment of a group health benefit plan premium that includes the child's parent or other individuals who are members of the child's family.

(g) The commission may not provide for the payment of any deductible, copayment, coinsurance, or other cost-sharing obligation for the child or another individual enrolled in a group health benefit plan under Subsection (f).

(h) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.07(b).

(i) Redesignated as subsec. (h) by Acts 2003, 78th Leg., ch. 11, Sec. 1.

Added by Acts 2001, 77th Leg., ch. 1165, Sec. 1, eff. Aug. 31, 2001.

Amended by Acts 2003, 78th Leg., ch. 11, Sec. 1, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 198, Sec. 2.07(b), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.125, eff. September 1, 2005.

Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the child health plan program conforms to standards

required under federal law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1120 (H.B. 1218), Sec. 2, eff. September 1, 2009.

**SUBCHAPTER C. ELIGIBILITY FOR COVERAGE UNDER CHILD HEALTH PLAN**

Sec. 62.101. ELIGIBILITY. (a) A child is eligible for health benefits coverage under the child health plan if the child:

- (1) is younger than 19 years of age;
- (2) is not eligible for medical assistance under the Medicaid program;
- (3) is not covered by a health benefits plan offering adequate benefits, as determined by the commission;
- (4) has a family income that is less than or equal to the income eligibility level established under Subsection (b); and
- (5) satisfies any other eligibility standard imposed under the child health plan program in accordance with 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations.

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) The commission shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose net family income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. In addition, the commission may establish eligibility standards regarding the amount and types of allowable assets for a family whose net family income is above 150 percent of the federal poverty level.

(b-1) The eligibility standards adopted under Subsection (b) related to allowable assets:

- (1) must allow a family to own at least \$10,000 in allowable assets; and
- (2) may not in calculating the amount of allowable assets under Subdivision (1) consider:
  - (A) the value of one vehicle that qualifies for an

exemption under commission rule based on its use;

(B) the value of a second or subsequent vehicle that qualifies for an exemption under commission rule based on its use if:

(i) the vehicle is worth \$18,000 or less; or

(ii) the vehicle has been modified to provide transportation for a household member with a disability;

(C) if no vehicle qualifies for an exemption based on its use under commission rule, the first \$18,000 of value of the highest valued vehicle; or

(D) the first \$7,500 of value of any vehicle not described by Paragraph (A), (B), or (C).

(c) The commissioner shall evaluate enrollment levels and program impact every six months during the first 12 months of implementation and at least annually thereafter and shall submit a finding of fact to the Legislative Budget Board and the Governor's Office of Budget and Planning as to the adequacy of funding and the ability of the program to sustain enrollment at the eligibility level established by Subsection (b). In the event that appropriated money is insufficient to sustain enrollment at the authorized eligibility level, the commissioner shall:

(1) suspend enrollment in the child health plan;

(2) establish a waiting list for applicants for coverage;

and

(3) establish a process for periodic or continued enrollment of applicants in the child health plan program as the availability of money allows.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.46, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 3, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.03(a), eff. September 28, 2011.

Sec. 62.1011. VERIFICATION OF INCOME. The commission shall continue employing methods of verifying the net income of the individuals considered in the calculation of an applicant's net

family income. The commission shall verify income under this section unless the applicant reports a net family income that exceeds the income eligibility level established under Section 62.101(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 4, eff. June 15, 2007.

Sec. 62.1012. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining whether a child meets family income and resource requirements for eligibility for the child health plan, the commission may not consider as income or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1186 (H.B. 3708), Sec. 7, eff. June 17, 2011.

Sec. 62.1015. ELIGIBILITY OF CERTAIN CHILDREN; DISALLOWANCE OF MATCHING FUNDS. (a) In this section, "charter school," "employee," and "regional education service center" have the meanings assigned by Section 2, Article 3.50-7, Insurance Code.

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section:

(1) participates in the same manner as any other child enrolled in the child health plan; and

(2) is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the Health and Human Services Commission, after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1187, Sec. 1.04, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.47, eff. Sept. 1, 2003.

Sec. 62.102. CONTINUOUS COVERAGE. (a) Subject to a review under Subsection (b), the commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

(1) the end of a period not to exceed 12 months, beginning the first day of the month following the date of the eligibility determination; or

(2) the individual's 19th birthday.

(b) During the sixth month following the date of initial enrollment or reenrollment of an individual whose net family income exceeds 185 percent of the federal poverty level, the commission shall:

(1) review the individual's net family income and may use electronic technology if available and appropriate; and

(2) continue to provide coverage if the individual's net family income does not exceed the income eligibility limits prescribed by this chapter.

(c) If, during the review required under Subsection (b), the commission determines that the individual's net family income exceeds the income eligibility limits prescribed by this chapter, the commission may not disenroll the individual until:

(1) the commission has provided the family an opportunity to demonstrate that the family's net family income is within the



income eligibility limits prescribed by this chapter; and

(2) the family fails to demonstrate such eligibility.

(d) The commission shall provide written notice of termination of eligibility to the individual not later than the 30th day before the date the individual's eligibility terminates.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.48, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 3.01, eff. August 29, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 5, eff. June 15, 2007.

Sec. 62.103. APPLICATION FORM AND PROCEDURES. (a) The commission, or the Texas Department of Human Services at the direction of and in consultation with the commission, shall adopt an application form and application procedures for requesting child health plan coverage under this chapter.

(b) The form and procedures must be coordinated with forms and procedures under the Medicaid program to ensure that there is a single consolidated application to seek assistance under this chapter or the Medicaid program.

(c) To the extent possible, the application form shall be made available in languages other than English.

(d) The commission may permit application to be made by mail, over the telephone, or through the Internet.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2001, 77th Leg., ch. 584, Sec. 1.

Sec. 62.104. ELIGIBILITY SCREENING AND ENROLLMENT. (a) The commission, or the Texas Department of Human Services at the direction of and in consultation with the commission, shall develop eligibility screening and enrollment procedures for children that comply with the requirements of 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations. The procedures shall ensure that Medicaid-eligible children are identified and referred to

the Medicaid program.

(b) The Texas Integrated Enrollment Services eligibility determination system or a compatible system may be used to screen and enroll children under the child health plan.

(c) The eligibility screening and enrollment procedures shall ensure that children who appear to be Medicaid-eligible are identified and that their families are assisted in applying for Medicaid coverage.

(d) A child who applies for enrollment in the child health plan, who is denied Medicaid coverage after completion of a Medicaid application under Subsection (c), but who is eligible for enrollment in the child health plan, shall be enrolled in the child health plan without further application or qualification.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(81), eff. June 17, 2011.

(f) A determination of whether a child is eligible for child health plan coverage under the program and the enrollment of an eligible child with a health plan provider must be completed, and information on the family's available choice of health plan providers must be provided, in a timely manner, as determined by the commission. The commission must require that the determination be made and the information be provided not later than the 30th day after the date a complete application is submitted on behalf of the child, unless the child is referred for Medicaid application under this section.

(g) In the first year of implementation of the child health plan, enrollment shall be open. Thereafter, the commission may establish enrollment periods.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(3), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(81), eff. June 17, 2011.

Sec. 62.105. COVERAGE FOR QUALIFIED ALIENS. The commission shall provide coverage under the state Medicaid program and under the program established under this chapter to a child who is a qualified

alien, as that term is defined by 8 U.S.C. Section 1641(b), if the federal government authorizes the state to provide that coverage. The commission shall comply with any prerequisite imposed under the federal law to providing that coverage.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

#### **SUBCHAPTER D. CHILD HEALTH PLAN**

Sec. 62.151. CHILD HEALTH PLAN COVERAGE. (a) The child health plan must comply with this chapter and the coverage requirements prescribed by 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations.

(b) In developing the covered benefits, the commission shall consider the health care needs of healthy children and children with special health care needs.

(c) In developing the plan, the commission shall ensure that primary and preventive health benefits do not include reproductive services, other than prenatal care and care related to diseases, illnesses, or abnormalities related to the reproductive system.

(d) The child health plan must allow an enrolled child with a chronic, disabling, or life-threatening illness to select an appropriate specialist as a primary care physician.

(e) In developing the covered benefits, the commission shall seek input from the Public Assistance Health Benefit Review and Design Committee established under Section 531.067, Government Code.

(f) The commission, if it determines the policy to be cost-effective, may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

- (1) more than four different outpatient brand-name prescription drugs during a month; or
- (2) more than a 34-day supply of a brand-name prescription drug at any one time.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.49, eff. Sept. 1, 2003.

Sec. 62.152. APPLICATION OF INSURANCE LAW. To provide the flexibility necessary to satisfy the requirements of Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan is not subject to a law that requires:

- (1) coverage or the offer of coverage of a health care service or benefit;
- (2) coverage or the offer of coverage for the provision of services by a particular health care services provider, except as provided by Section 62.155(b); or
- (3) the use of a particular policy or contract form or of particular language in a policy or contract form.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.153. COST SHARING. (a) To the extent permitted under 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations, the commission shall require enrollees to share the cost of the child health plan, including provisions requiring enrollees under the child health plan to pay:

- (1) a copayment for services provided under the plan;
- (2) an enrollment fee; or
- (3) a portion of the plan premium.

(b) Subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(c) If cost-sharing provisions imposed under Subsection (a) include requirements that enrollees pay a portion of the plan premium, the commission shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the Texas Department of Health, the Texas Department of Human Services, or the health plan provider.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.50, eff. Sept. 1,

2003.

Sec. 62.154. WAITING PERIOD; CROWD OUT. (a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period and may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(b) A child is not subject to a waiting period adopted under Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded 10 percent of the family's net income;

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission; or

(4) the commission has determined that other grounds exist for a good cause exception.

(c) A child described by Subsection (b) may enroll in the child health plan program at any time, without regard to any open enrollment period established under the enrollment procedures.

(d) The waiting period required by Subsection (a) must:

(1) extend for a period of 90 days after the last date on which the applicant was covered under a health benefits plan; and

(2) apply to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage under the child health plan.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.51(a), (b), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 6, eff. June 15, 2007.

Sec. 62.155. HEALTH PLAN PROVIDERS. (a) The commission, or the Texas Department of Health at the direction of and in consultation with the commission, shall select the health plan providers under the program through a competitive procurement process. A health plan provider, other than a state administered primary care case management network, must hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health plan provider to provide the type of child health plan offered and must satisfy, except as provided by this chapter, any applicable requirement of the Insurance Code or another insurance law of this state.

(b) A managed care organization or other entity shall seek to obtain, in the organization's or entity's provider network, the participation of significant traditional providers, as defined by commission rule, if that organization or entity:

(1) contracts with the commission or with another agency or entity to operate a part of the child health plan under this chapter; and

(2) uses a provider network to provide or arrange for health care services under the child health plan.

(c) In selecting a health plan provider, the commission:

(1) may give preference to a person who provides similar

coverage under the Medicaid program; and

(2) shall provide for a choice of at least two health plan providers in each service area.

(d) The commissioner may authorize an exception to Subsection (c)(2) if there is only one acceptable applicant to become a health plan provider in the service area.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.52, eff. Sept. 1, 2003.

Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN PROVIDER NETWORKS. Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the executive commissioner of the commission shall adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses and physician assistants to be treated in the same manner as primary care physicians with regard to:

- (1) selection and assignment as primary care providers;
- (2) inclusion as primary care providers in the provider network; and
- (3) inclusion as primary care providers in any provider network directory maintained by the organization or entity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 22, eff. November 1, 2013.

Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers who provide health care services under the child health plan must satisfy certification and licensure requirements, as required by the commission, consistent with law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.

The executive commissioner of the commission shall adopt rules for prohibiting a person from participating in the child health plan program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

- (1) fails to repay overpayments under the program; or
- (2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 8, eff. September 1, 2011.

Text of section as added by Acts 2001, 77th Leg., ch. 959, Sec. 5

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

(a) In providing covered benefits to a child with special health care needs, a health plan provider must permit benefits to be provided through telemedicine medical services and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single telemedicine medical services and telehealth services session, if the commission determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the commission shall consult with:

- (1) The University of Texas Medical Branch at Galveston;
- (2) Texas Tech University Health Sciences Center;



- (3) the Texas Department of Health;
- (4) providers of telemedicine hub sites in this state;
- (5) providers of services to children with special health care needs; and
- (6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 5, eff. June 14, 2001.

Text of section as added by Acts 2001, 77th Leg., ch. 1255, Sec. 4

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES.

(a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, if the commission determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the commission shall consult with the telemedicine advisory committee.

(d) In this section, "telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 1255, Sec. 4, eff. June 15, 2001.

Sec. 62.158. STATE TAXES. The commission shall ensure that any

experience rebate or profit-sharing for health plan providers under the child health plan is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit-sharing.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.53, eff. Sept. 1, 2003.

Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist a child manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the commission identifies populations for which disease management would be cost-effective.

(b) The child health plan must provide disease management services or coverage for disease management services in the manner required by the commission, including:

- (1) patient self-management education;
- (2) provider education;
- (3) evidence-based models and minimum standards of care;
- (4) standardized protocols and participation criteria; and
- (5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 1, eff. June 20, 2003.

#### **CHAPTER 63. HEALTH BENEFITS PLAN FOR CERTAIN CHILDREN**

Sec. 63.001. DEFINITION. In this chapter, "commission" means the Health and Human Services Commission.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.002. NOT AN ENTITLEMENT. This chapter does not establish an entitlement to assistance in obtaining health benefits for a child.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN CHILDREN. The commission shall develop and implement a program to provide health benefits plan coverage for a child who:

- (1) is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b);
- (2) is younger than 19 years of age;
- (3) entered the United States after August 22, 1996;
- (4) has resided in the United States for less than five years; and
- (5) meets the income eligibility requirement of, but is not eligible for assistance under:
  - (A) the child health plan program under Chapter 62; or
  - (B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.004. BENEFITS COVERAGE REQUIRED. To the extent possible, the program required by Section 63.003 must provide benefits comparable to the benefits provided under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.005. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider under this chapter must:

- (1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered through the program required by Section 63.003; and
- (2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by the commission, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the commission may not require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The commission may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under this chapter that is equal to any copayment required under the child health plan program under Chapter 62.

(c) The commission may require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the child health plan program under Chapter 62 to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.007. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under this chapter may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

#### **CHAPTER 64. MISCELLANEOUS PROVISIONS**

Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The Texas Department of Health state-owned multi-categorical teaching hospital account is an account in the general revenue fund. Money in the account may be appropriated only to the department to provide funding for indigent

health care.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 3.01, eff. Sept. 1, 1999.

**CHAPTER 75. REGIONAL OR LOCAL HEALTH CARE PROGRAMS FOR EMPLOYEES OF SMALL EMPLOYERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 75.001. PURPOSE. The purpose of this chapter is to:

- (1) improve the health of employees of small employers and their families by improving the employees' access to health care and by reducing the number of those employees who are uninsured;
- (2) reduce the likelihood that those employees and their families will require services from state-funded entitlement programs such as Medicaid;
- (3) contribute to economic development by helping small businesses remain competitive with a healthy workforce and health care benefits that will attract employees; and
- (4) encourage innovative solutions for providing and funding health care services and benefits.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.002. DEFINITIONS. In this chapter:

- (1) "Employee" means an individual employed by an employer. The term includes a partner of a partnership and the proprietor of a sole proprietorship.
- (2) "Governing body" means:
  - (A) the commissioners courts of the counties participating in a regional health care program;
  - (B) the commissioners court of a county participating in a local health care program; or
  - (C) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.
- (3) "Local health care program" means a local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B.

(4) "Regional health care program" means a regional health care program operating in two or more counties and established for the benefit of the employees of small employers under Subchapter B.

(5) "Small employer" means a person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

#### **SUBCHAPTER B. REGIONAL OR LOCAL HEALTH CARE PROGRAM**

##### **Sec. 75.051. ESTABLISHMENT OF PROGRAM; MULTICOUNTY COOPERATION.**

(a) The commissioners court of a county may, by order, establish or participate in a local health care program under this subchapter.

(b) The commissioners courts of two or more counties may, by joint order, establish or participate in a regional health care program under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.052. GOVERNANCE OF PROGRAM. (a) A regional health care program may be operated subject to the direct governance of the commissioners courts of the participating counties. A local health care program may be operated subject to the direct governance of the commissioners court of the participating county. A regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity that:

(1) operates the program under a contract with the commissioners court or courts, as applicable; or

(2) is an entity in which the county or counties participate or that is established or designated by the commissioners court or courts, as applicable, to operate the program.

(b) In selecting an entity described by Subsection (a)(1) or (2) to operate a regional or local health care program, the commissioners court or courts, as applicable, shall require, to the extent possible, that the entity be authorized under federal law to accept donations on a basis that is tax-deductible or otherwise tax-

advantaged for the contributor.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.053. OPERATION OF PROGRAM. A regional or local health care program provides health care services or benefits to the employees of participating small employers who are located within the boundaries of the participating county or counties, as applicable. A program may also provide services or benefits to the dependents of those employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.054. PARTICIPATION BY SMALL EMPLOYERS; SHARE OF COST. Subject to Section 75.153, the governing body may establish criteria for participation in a regional or local health care program by small employers, the employees of the small employers, and their dependents. The criteria must require that participating employers and participating employees pay a share of the premium or other cost of the program.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.055. ADDITIONAL FUNDING. (a) A governing body may accept and use state money made available through an appropriation from the general revenue fund or a gift, grant, or donation from any source to operate the regional or local health care program and to provide services or benefits under the program.

(b) A governing body may apply for and receive funding from the health opportunity pool trust fund under Subchapter D.

(c) A governing body shall actively solicit gifts, grants, and donations to:

(1) fund services and benefits provided under the regional or local health care program; and

(2) reduce the cost of participation in the program for

small employers and their employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

**SUBCHAPTER C. HEALTH CARE SERVICES AND BENEFITS**

Sec. 75.101. ALTERNATIVE PROGRAMS AUTHORIZED; PROGRAM OBJECTIVES. In developing a regional or local health care program, a governing body may provide health care services or benefits as described by this subchapter or may develop another type of program to accomplish the purposes of this chapter. A regional or local health care program must be developed, to the extent practicable, to:

(1) reduce the number of individuals without health benefit plan coverage within the boundaries of the participating county or counties;

(2) address rising health care costs and reduce the cost of health care services or health benefit plan coverage for small employers and their employees within the boundaries of the participating county or counties;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, and diabetes and low birth weight in infants;

(4) promote efficient and collaborative delivery of health care services;

(5) serve as a model for the innovative use of health information technology to promote efficient delivery of health care services, reduce health care costs, and improve the health of the community; and

(6) provide fair payment rates for health care providers.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.102. HEALTH BENEFIT PLAN COVERAGE. (a) A regional or local health care program may provide health care benefits to the employees of small employers by purchasing or facilitating the purchase of health benefit plan coverage for those employees from a health benefit plan issuer, including coverage under:

(1) a small employer health benefit plan offered under



Chapter 1501, Insurance Code;

(2) a standard health benefit plan offered under Chapter 1507, Insurance Code; or

(3) any other health benefit plan available in this state.

(b) The governing body may form one or more cooperatives under Subchapter B, Chapter 1501, Insurance Code.

(c) Notwithstanding Chapter 1251, Insurance Code, an insurer may issue a group accident and health insurance policy, including a group contract issued by a group hospital service corporation, to cover the employees of small employers participating in a regional or local health care program. The group policyholder of a policy issued in accordance with this subsection is the governing body or the designee of the governing body.

(d) A health maintenance organization may issue a health care plan to cover the employees of small employers participating in a regional or local health care program. The group contract holder of a contract issued in accordance with this subsection is the governing body or the designee of the governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.103. OTHER HEALTH BENEFIT PLANS OR PROGRAMS. To the extent authorized by federal law, the governing body may establish or facilitate the establishment of self-funded health benefit plans or may facilitate the provision of health benefit coverage through health savings accounts and high-deductible health plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.104. HEALTH CARE SERVICES. (a) A regional or local health care program may contract with health care providers within the boundaries of the participating county or counties to provide health care services directly to the employees of participating small employers and the dependents of those employees.

(b) A regional or local health care program shall allow any individual who receives state premium assistance to buy into the health benefit plan offered by the regional or local health care

program.

(c) A governing body that operates a regional or local health care program under this section may require that participating employees and dependents obtain health care services only from health care providers that contract to provide those services under the program and may limit the health care services provided under the program to services provided within the boundaries of the participating county or counties.

(d) A governing body operating a regional or local health care program operated under this section is not an insurer or health maintenance organization and the program is not subject to regulation by the Texas Department of Insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

#### **SUBCHAPTER D. TEXAS HEALTH OPPORTUNITY POOL FUNDS**

Sec. 75.151. DEFINITION. In this subchapter, "health opportunity pool trust fund" means the trust fund established under Subchapter N, Chapter 531, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.152. FUNDING AUTHORIZED. Notwithstanding any other law, a regional or local health care program may apply for funding from the health opportunity pool trust fund and the fund may provide funding in accordance with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.153. ELIGIBILITY FOR FUNDS; STATEWIDE ELIGIBILITY CRITERIA. To be eligible for funding from money in the health opportunity pool trust fund, a regional or local health care program must:

(1) comply with any requirement imposed under the waiver obtained under Section 531.502, Government Code, including, to the

extent applicable, any requirement that health care benefits or services provided under the program be provided in accordance with statewide eligibility criteria; and

(2) provide health care benefits or services under the program to a person receiving premium payment assistance for health benefits coverage through a program established under Section 531.507, Government Code, regardless of whether the person is an employee, or dependent of an employee, of a small employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

**SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES**

**CHAPTER 81. COMMUNICABLE DISEASES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Communicable Disease Prevention and Control Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.002. RESPONSIBILITY OF STATE AND PUBLIC. The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.003. DEFINITIONS. In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(2) "Health authority" means:

(A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the

duties of a health authority or the regional director's designee.

(3) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

(4-a) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure. The term includes a sheriff or constable.

(5) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Public health disaster" means:

(A) a declaration by the governor of a state of disaster; and

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:

(i) poses a high risk of death or serious long-term disability to a large number of people; and

(ii) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(8) "Reportable disease" includes only a disease or condition included in the list of reportable diseases.

(9) "Resident of this state" means a person who:

(A) is physically present and living voluntarily in this state;

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the

superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.167, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 1, eff. June 14, 2013.

Sec. 81.004. ADMINISTRATION OF CHAPTER. (a) The commissioner is responsible for the general statewide administration of this chapter.

(b) The board may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the board may exercise a power granted to or perform a duty imposed on the board under this chapter except as otherwise required by law.

(d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.168, eff. Sept. 1, 2003.

Sec. 81.005. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.006. FUNDS. The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.007. LIMITATION ON LIABILITY. A private individual performing duties in compliance with orders or instructions of the department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of wilful misconduct or gross negligence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with the department to exchange information on communicable diseases in animals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation

under Chapter 418, Government Code (Texas Disaster Act of 1975).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.010. INTERAGENCY COORDINATING COUNCIL FOR HIV AND HEPATITIS. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 85.002.

(b) The Interagency Coordinating Council for HIV and Hepatitis facilitates communication between state agencies concerning policies relating to AIDS, HIV, and hepatitis.

(c) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each agency:

- (1) the Department of State Health Services;
- (2) the Department of Aging and Disability Services;
- (3) the Department of Assistive and Rehabilitative Services;
- (4) the Department of Family and Protective Services;
- (5) the Texas Youth Commission;
- (6) the Texas Department of Criminal Justice;
- (7) the Texas Juvenile Probation Commission;
- (8) the Texas Medical Board;
- (9) the Texas Board of Nursing;
- (10) the State Board of Dental Examiners;
- (11) the Health and Human Services Commission;
- (12) the Texas Workforce Commission; and
- (13) the Texas Higher Education Coordinating Board.

(d) All representatives appointed to the council must be directly involved in policy or program activities related to services for AIDS, HIV, or hepatitis for their respective agencies.

(e) The representative from the Health and Human Services Commission serves as chairperson of the council.

(f) The council may meet on meeting dates set by the council. Each agency that has a representative appointed to the council should ensure that a representative of the agency attends each meeting of the council.

(g) The council shall provide an opportunity for interested members of the public, including consumers and providers of health services, to provide recommendations and information to the council

during:

(1) any meeting at which the council intends to vote or votes on any matter; and

(2) at least one of any two consecutive meetings of the council.

(h) The council shall:

(1) coordinate communication among the member agencies listed in Subsection (c) concerning each agency's programs in providing services related to AIDS, HIV, and hepatitis;

(2) develop a plan that facilitates coordination of agency programs based on statistical information regarding this state for:

(A) prevention of AIDS, HIV infection, and hepatitis;

and

(B) provision of services to individuals who have hepatitis or are infected with HIV;

(3) identify all statewide plans related to AIDS, HIV, and hepatitis;

(4) compile a complete inventory of all federal, state, and local money spent in this state on HIV infection, AIDS, and hepatitis prevention and health care services, including services provided through or covered under Medicaid and Medicare;

(5) identify the areas with respect to which state agencies interact on HIV, AIDS, and hepatitis issues and the policy issues arising from that interaction;

(6) assess gaps in prevention and health care services for HIV infection, AIDS, and hepatitis in this state, including gaps in services that result from provision of services by different state agencies, and develop strategies to address these gaps through service coordination;

(7) identify barriers to prevention and health care services for HIV infection, AIDS, and hepatitis faced by marginalized populations;

(8) identify the unique health care service and other service needs of persons who are infected with HIV or who have AIDS or hepatitis;

(9) evaluate the level of service and quality of health care in this state for persons who are infected with HIV or who have AIDS or hepatitis as compared to national standards;

(10) identify issues that emerge related to HIV, AIDS, and hepatitis and the potential impact on delivery of prevention and



health care services; and

(11) provide the information required under Subdivisions (1) through (10) to the Department of State Health Services.

(h-1) Each agency listed in Subsection (c) shall provide information under Subsection (h) to the council. The council may request information under Subsection (h) from an agency, and the agency shall comply with the request.

(i) Not later than September 1 of each year, the Department of State Health Services shall file a report with the legislature and the governor containing policy recommendations based on information reported to the council in Subsection (h) relating to:

(1) prevention of AIDS, HIV infection, and hepatitis; and

(2) delivery of health services to individuals who have AIDS or hepatitis or are infected with HIV.

(j) The council shall establish advisory committees composed of representatives from associations, consumer advocates, and regulatory agencies, boards, or commissions as needed to assist in carrying out its duties under this section.

(k) The Health and Human Services Commission shall provide administrative support to the council.

Added by Acts 1993, 73rd Leg., ch. 708, Sec. 1, eff. Sept. 1, 1993.  
Amended by ; Acts 1995, 74th Leg., ch. 835, Sec. 24, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.38, eff. Sept. 1, 1997.  
Renumbered from Sec. 85.017 and amended by Acts 2001, 77th Leg., ch. 195, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.008, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 670 (H.B. [1370](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 61, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. [3278](#)), Sec. 4, eff. June 17, 2011.

Sec. 81.011. REQUEST FOR INFORMATION. In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of

the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

Added by Acts 1991, 72th Leg., ch. 898, Sec. 3, eff. September 1, 1991.

Redesignated from Health and Safety Code Sec. 81.023, subsec. (d) and amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. PREVENTION**

Sec. 81.021. BOARD'S DUTY. The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.022. HEALTH EDUCATION. (a) The department may conduct a program of health education for the prevention and control of communicable disease.

(b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.

(c) The department shall recommend a public school health curriculum to the State Board of Education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.023. IMMUNIZATION. (a) The board shall develop immunization requirements for children.

(b) The board shall cooperate with the Department of Protective and Regulatory Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.

(c) The board shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

(d) Redesignated as V.T.C.A., Health and Safety Code Sec. 81.011 by Acts 2003, 78th Leg., ch. 198, Sec. 2.169.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 898, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.075, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

Sec. 81.024. REPORTS BY BOARD. The board shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the board determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES**

Sec. 81.041. REPORTABLE DISEASES. (a) The board shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The board shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The board shall maintain and revise as necessary the list of reportable diseases.

(d) The board may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the board shall require reports.

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without board rule or action. The commissioner shall issue appropriate instructions relating to complying with the reporting

requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.170, eff. Sept. 1, 2003.

Sec. 81.042. PERSONS REQUIRED TO REPORT. (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority.

(b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The board by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the board, in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

(2) an administrator or director of a public or private temporary or permanent child-care facility;

(3) an administrator or director of a nursing home, personal care home, adult respite care center, or adult day-care center;

- (4) an administrator of a home health agency;
- (5) an administrator or health official of a public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
- (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (8) a parent, guardian, or householder;
- (9) a health professional;
- (10) an administrator or health official of a penal or correctional institution; or
- (11) emergency medical service personnel, a peace officer, or a firefighter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.171, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 7, eff. June 21, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. [1178](#)), Sec. 14, eff. September 1, 2012.

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY. (a) Each health authority shall keep a record of each case of a reportable disease that is reported to the authority.

(b) Except as provided by Subsection (c), a health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule.

(c) A health authority each week shall report to the department's central office all cases reported to the authority during the previous week of:

- (1) acquired immune deficiency syndrome; and
- (2) human immunodeficiency virus infection.

(d) A health authority must include in a report filed under Subsection (c) all information required by the department for purposes of this section or other law, including:

- (1) an infected person's city and county of residence, age, gender, race, ethnicity, and national origin; and
- (2) the method by which the disease was transmitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2003, 78th Leg., ch. 198, Sec. 2.172, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 1, eff.  
September 1, 2007.

Sec. 81.044. REPORTING PROCEDURES. (a) The board shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.

(b) The board may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

- (1) the patient's name, address, age, sex, race, and occupation;
- (2) the date of onset of the disease or condition;
- (3) the probable source of infection; and
- (4) the name of the attending physician or dentist.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.

(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the department shall require the reports to contain:

- (1) the information described by Subsection (b); and
- (2) the patient's ethnicity, national origin, and city and county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 2, eff.  
September 1, 2007.

Sec. 81.045. REPORTS OF DEATH. (a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease

that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.046. CONFIDENTIALITY. (a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter

and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or the department.

(g) A judge of a county or district court may issue a protective order or take other action to limit disclosure of medical or epidemiological information obtained under this section before that information is entered into evidence or otherwise disclosed in a court proceeding.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.39, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.173, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. [1171](#)), Sec. 1, eff. June 19, 2009.

Sec. 81.047. EPIDEMIOLOGICAL REPORTS. Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.048. NOTIFICATION OF EMERGENCY PERSONNEL, PEACE OFFICERS, DETENTION OFFICERS, COUNTY JAILERS, AND FIRE FIGHTERS. (a) The board shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive test result for a reportable disease designated under Subsection (a) shall be given to an emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter as provided by this section if:

(1) the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter delivered a person to a hospital as defined by Section 74.001, Civil Practice and Remedies Code;

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter was exposed to the

reportable disease during the course of duty.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the local health authority to the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter; and

(3) by the director to the employee affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

(g) A hospital that gives notice of a possible exposure under Subsection (c) or a local health authority that receives notice of a possible exposure under Subsection (c) may give notice of the possible exposure to a person other than emergency medical personnel, a peace officer, a detention officer, a county jailer, or a fire fighter if the person demonstrates that the person was exposed to the reportable disease while providing emergency care. The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 135 (H.B. 738), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 2, eff. September 1, 2005.

Sec. 81.049. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING HIV INFECTION. (a) The board by rule shall prescribe the criteria that constitute exposure to reportable diseases, including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:

- (1) a law enforcement officer;
- (2) a fire fighter;
- (3) an emergency medical service employee or paramedic;
- (4) a correctional officer;
- (5) an employee, contractor, or volunteer, other than a

correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code; or

- (6) an employee of a juvenile probation department.

(c) A request under this section may be made only if the person:

- (1) has experienced the exposure in the course of the person's employment or volunteer service;
- (2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and
- (3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by board rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease, including HIV infection.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

(1) state the grounds and provisions of the order, including the factual basis for its issuance;

(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and

(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by board rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) HIV counseling and testing conducted under this section

must conform to the model protocol on HIV counseling and testing prescribed by the department.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease, including HIV infection, may not be required to be tested.

(l) In this section "HIV" and "test result" have the meanings assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 17, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 320 (S.B. 665), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 925 (H.B. 3005), Sec. 1, eff. June 19, 2009.

Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION.

(a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:

(1) methods of transmission and prevention of HIV infection;

(2) telephone numbers and addresses of HIV antibody testing

sites; and

(3) existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

(1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or

(2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).

(g) A partner notification program shall be carried out as follows:

(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and

(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.

(h) A health care professional who fails to make the notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.

(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.

(k) In this section, "HIV" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 18, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 622, Sec. 1, eff. June 14, 1995.

For expiration of Subsections (b-2) and (b-3), see Subsection (b-3).

Sec. 81.052. REPORTS AND ANALYSES CONCERNING AIDS AND HIV INFECTION. (a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall:

(1) quarterly compile the information submitted under Section 81.043(c) and make the compiled data available to the public within six months of the last day of each quarter;

(2) annually analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, city, county, age, gender, race, ethnicity, national origin, transmission category, and other factors as appropriate; and

(3) annually prepare a report on the analysis conducted under Subdivision (2) and make the report available to the public.

(b-1) The department may not include any information that would allow the identification of an individual in an analysis conducted under Subsection (b) or in a report prepared under that subsection.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 19, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 3, eff. September 1, 2007.

#### **SUBCHAPTER D. INVESTIGATION AND INSPECTION**

Sec. 81.061. INVESTIGATION. (a) The department shall investigate the causes of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.062. WITNESSES; DOCUMENTS. (a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The board by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.063. SAMPLES. (a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.



(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.064. INSPECTION. (a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules of the board adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that is not used for private residential purposes, regardless of ownership.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.174, eff. Sept. 1, 2003.

Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.175, eff. Sept. 1, 2003.

Sec. 81.066. CONCEALING COMMUNICABLE DISEASE OR EXPOSURE TO COMMUNICABLE DISEASE; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.176, eff. Sept. 1, 2003.

Sec. 81.067. CONCEALING, REMOVING, OR DISPOSING OF AN INFECTED OR CONTAMINATED ANIMAL, OBJECT, VEHICLE, WATERCRAFT, OR AIRCRAFT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department, a health authority, or a peace officer.

(b) An offense under this Section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.177, eff. Sept. 1, 2003.

Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or

access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.178, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. CONTROL**

Sec. 81.081. BOARD'S DUTY. The board shall impose control measures to prevent the spread of disease in the exercise of its power to protect the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

(c-1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the examination, observation, quarantine, isolation, treatment, or imposition of control measures during a public health disaster or during an area quarantine under Section 81.085. A health authority may not designate a nursing home or other institution licensed under Chapter 242.

(d) A declaration of a public health disaster may continue for not more than 30 days. A public health disaster may be renewed one time by the commissioner for an additional 30 days.

(e) The governor may terminate a declaration of a public health disaster at any time.

(f) In this section, "control measures" includes:

- (1) immunization;
- (2) detention;
- (3) restriction;
- (4) disinfection;
- (5) decontamination;
- (6) isolation;
- (7) quarantine;
- (8) disinfestation;
- (9) chemoprophylaxis;
- (10) preventive therapy;
- (11) prevention; and
- (12) education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 20, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 198, Sec. 2.179, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.01, eff. September 1, 2007.

Sec. 81.083. APPLICATION OF CONTROL MEASURES TO INDIVIDUAL.

(a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:

- (1) measures for preventing reinfection and spread of the disease; and
- (2) the necessity for treatment until the individual is cured or free from the infection.

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

(1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required

medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

(k) If the department or a health authority has reasonable cause to believe that a group of five or more individuals has been exposed to or infected with a communicable disease, the department or health authority may order the members of the group to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state. If the department or health authority adopts control measures under this subsection, each member of the group is subject to the requirements of this section.

(1) An order under Subsection (k) must be in writing and be delivered personally or by registered or certified mail to each member of the group, or the member's parent, legal guardian, or managing conservator if the member is a minor. If the name, address, and county of residence of any member of the group is unknown at the time the order is issued, the department or health authority must publish notice in a newspaper of general circulation in the county that includes the area of the suspected exposure and any other county in which the department or health authority suspects a member of the group resides. The notice must contain the following information:

(1) that the department or health authority has reasonable cause to believe that a group of individuals is ill with, has been exposed to, or is the carrier of a communicable disease;

(2) the suspected time and place of exposure to the disease;

(3) a copy of any orders under Subsection (k);

(4) instructions to an individual to provide the individual's name, address, and county of residence to the department or health authority if the individual knows or reasonably suspects that the individual was at the place of the suspected exposure at the time of the suspected exposure;

(5) that the department or health authority may request that an application for court orders under Subchapter G be filed for the group, if applicable; and

(6) that a criminal penalty applies to an individual who:

(A) is a member of the group; and

(B) knowingly refuses to perform or allow the performance of the control measures in the order.

(m) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure the members of a group subject to an order issued under Subsection (k); and

(2) except as directed by the department or health authority, prevent the members from leaving the group or other individuals from joining the group.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.180, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.02, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 2, eff. June 14, 2013.

Sec. 81.084. APPLICATION OF CONTROL MEASURES TO PROPERTY. (a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in the county courthouse. If

the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the board or health authority.

(d-1) In a public health disaster, the department or health authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or



(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(e) The department or health authority may petition the county or district court of the county in which the property is located for orders necessary for public health if:

(1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and

(2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.

(f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.

(g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

(1) remove the quarantine;

(2) if the property is an object, remove the quarantine tags; and

(3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction

in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

- (1) an object;
- (2) a parcel of land; or
- (3) a structure, animal, or other property on a parcel of

land.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(l) A peace officer, including a sheriff or constable, may use reasonable force to:

- (1) secure a property subject to a court order issued under this section; and
- (2) except as directed by the department or health authority, prevent an individual from entering or leaving the property subject to the order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.181, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 3, eff. June 14, 2013.

Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY. (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in

the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:

- (1) exchange morbidity, mortality, and other technical information;
- (2) receive extrajurisdictional inspection reports;
- (3) coordinate disease control measures;
- (4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and
- (5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the department's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The department or, with the department's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district

may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department or an order or instruction of a health authority issued under a department rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

(j) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a quarantine area; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the quarantine area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.182, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 4, eff. June 14, 2013.

Sec. 81.086. APPLICATION OF CONTROL MEASURES TO PRIVATE AND COMMON CARRIERS AND PRIVATE CONVEYANCES. (a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide information on passengers and cargo manifests that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The board shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the board or health authority is

subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the board or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in

this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.183, eff. Sept. 1, 2003.

Sec. 81.087. VIOLATION OF CONTROL MEASURE ORDERS; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.088. REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device, notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.184, eff. Sept. 1, 2003.

Sec. 81.089. TRANSPORTATION; CRIMINAL PENALTY. (a) A person commits an offense if, before notifying the department or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the

public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.185, eff. Sept. 1, 2003.

Sec. 81.090. DIAGNOSTIC TESTING DURING PREGNANCY AND AFTER BIRTH. (a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for:

(A) syphilis;

(B) HIV infection; and

(C) hepatitis B infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.



(b) A successor is presumed to have complied with this section if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for:

(A) syphilis; and

(B) hepatitis B infection.

(c-1) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from the diagnostic test for HIV infection performed under Subsection (a-1), the physician or person shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for HIV infection; and

(3) instruct the laboratory to expedite the processing of the test so that the results are received less than six hours after the time the sample is submitted.

(c-2) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from a diagnostic test for HIV infection performed under Subsection (a-1), and the diagnostic test for HIV infection was not performed before delivery under Subsection (c-1), the physician or other person in attendance at delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the newborn child less than two hours after the time of birth;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and

(3) instruct the laboratory to expedite the processing of the test so that the results are received less than six hours after the time the sample is submitted.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7,

eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(g) Repealed by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993.

(h) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(i) Before conducting or causing to be conducted a diagnostic test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.

(j) The result of a test for HIV infection under Subsection (a)(2)(B), (a-1), (c-1), or (c-2) is a test result for purposes of Subchapter F.

(k) Before the sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the department and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(1) A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (a)(2)(B), (a-1), or (c-1) if the woman objects. A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (c-2) if a parent, managing conservator, or guardian objects.

(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:

(1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or syphilis, which must be in another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and

(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.

(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.

(o) In this section, "HIV" has the meaning assigned by Section 81.101.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 420, Sec. 1, eff. June 6, 1993; Acts 1995, 74th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 7, eff. September 1, 2009.

Sec. 81.091. OPTHALMIA NEONATORUM PREVENTION; CRIMINAL PENALTY. (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the board to prevent ophthalmia neonatorum.

(b) A midwife is responsible for the administration of the prophylaxis to each infant the midwife delivers by:

(1) administering the prophylaxis under standing delegation orders issued by a licensed physician; or

(2) requiring the prophylaxis to be administered by an appropriately licensed and trained individual under standing delegation orders issued by a licensed physician.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the board free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each infant that the midwife delivers.

(e) Administration and possession by a midwife of prophylaxis under this section is not a violation of Chapter 483.

(f) A health care provider may not charge for prophylaxis received free from the department.

(g) A person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(h) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 158, Sec. 24, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 14.772, eff. Sept. 1, 2001.

Sec. 81.092. CONTRACTS FOR SERVICES. The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

- (1) local or regional health department services are not available;
- (2) the person in need of examination or treatment is unable to pay for the services; and
- (3) there is an immediate need for examination or treatment of the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A court may direct a person convicted of an offense under Section 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentencing report be prepared under Section 9, Article 42.12, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 21, eff. Sept. 1, 1991.

Sec. 81.094. TESTING BY HOSPITALS OF PERSONS INDICTED FOR

CERTAIN CRIMES. A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 22, eff. Sept. 1, 1991.

Sec. 81.095. TESTING FOR ACCIDENTAL EXPOSURE. (a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority, which are responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) A test conducted under this section may be performed without the patient's specific consent.

(d) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(e) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

Added by Acts 1999, 76th Leg., ch. 1169, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 610, Sec. 1, eff. June 11, 2001;  
Acts 2003, 78th Leg., ch. 835, Sec. 1, eff. June 20, 2003.

Sec. 81.0955. TESTING FOR ACCIDENTAL EXPOSURE INVOLVING A DECEASED PERSON. (a) This section applies only to the accidental exposure to the blood or other body fluids of a person who dies at the scene of an emergency or during transport to the hospital involving certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport of a person to the hospital.

(b) A hospital, certified emergency medical services personnel, or a physician on behalf of the person exposed, following a report of the exposure incident, shall take reasonable steps to test the deceased person for communicable diseases. The hospital, certified emergency medical services personnel, or physician shall provide the test results to the department or to the local health authority responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the next of kin of the deceased person regarding the test results. The hospital, certified emergency medical services personnel, or physician shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital, certified emergency medical services personnel, or a physician to provide any further testing, treatment, or services or to perform further procedures. The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this subsection.

(c) The organization that employs the exposed person or for which the exposed person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test.

(d) If the deceased person is delivered to a funeral establishment as defined in Section 651.001, Occupations Code, before a hospital, certified emergency medical services personnel, or a physician has tested the deceased person, the funeral establishment shall allow, if requested by the hospital, certified emergency medical services personnel, or a physician, access to the deceased

person for testing under this section.

(e) A test conducted under this section may be performed without the consent of the next of kin of the deceased person being tested.

(f) A hospital, certified emergency medical services personnel, or a physician that conducts a test under this section must comply with the confidentiality requirements of Section 81.046 except as specifically provided by this section.

Added by Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 3, eff. September 1, 2005.

**SUBCHAPTER F. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS**

Sec. 81.101. DEFINITIONS. In this subchapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(3) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.

(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 81.102. TESTS; CRIMINAL PENALTY. (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(1);

(3) the medical procedure or test is authorized under Chapter 545, Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to board guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation and approved by

the department; or

(F) to test residents and clients of residential facilities of the Texas Youth Commission, but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Youth Commission.

(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.

(c) Protocols adopted under Subsection (a)(4)(D) must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 23, 24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.126, eff. September 1, 2005.

Sec. 81.103. CONFIDENTIALITY; CRIMINAL PENALTY. (a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

- (1) the department under this chapter;
- (2) a local health authority if reporting is required under this chapter;
- (3) the Centers for Disease Control and Prevention of the United States Public Health Service if reporting is required by federal law or regulation;
- (4) the physician or other person authorized by law who ordered the test;
- (5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;
- (6) the person tested or a person legally authorized to consent to the test on the person's behalf;
- (7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;
- (8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article;
- (9) a person exposed to HIV infection as provided by Section 81.050; and
- (10) a county or district court to comply with this chapter or rules relating to the control and treatment of communicable diseases and health conditions.

(c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.

(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.

(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.

(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.

(k) A judge of a county or district court may issue a

protective order or take other action to limit disclosure of a test result obtained under this section before that information is entered into evidence or otherwise released in a court proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 25, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. 1171), Sec. 2, eff. June 19, 2009.

Sec. 81.104. INJUNCTION; CIVIL LIABILITY. (a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

- (1) actual damages;
- (2) a civil penalty of not more than \$5,000; and
- (3) court costs and reasonable attorney's fees incurred by

the person bringing the action.

(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

- (1) actual damages;
- (2) a civil penalty of not less than \$5,000 nor more than \$10,000; and
- (3) court costs and reasonable attorney's fees incurred by

the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise

provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.

(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 26, eff. Sept. 1, 1991.

Sec. 81.106. GENERAL CONSENT. (a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.

(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 27, eff. Sept. 1, 1991.

Sec. 81.107. CONSENT TO TEST FOR CERTAIN ACCIDENTAL EXPOSURES.

(a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(4)(D), the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.

(b) A test under this section may be done only if:

(1) the test is done according to protocols established as provided by Section 81.102(c); and

(2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result.

(c) A test result under this section is subject to the

confidentiality provisions of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 28, eff. Sept. 1, 1991.

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the State Board of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 29, eff. Sept. 1, 1991.

Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS.

(a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:

- (1) the meaning of the test result;
- (2) the possible need for additional testing;
- (3) measures to prevent the transmission of HIV;
- (4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;
- (5) the benefits of partner notification; and
- (6) the availability of partner notification programs.

(b) Post-test counseling should:

- (1) increase a person's understanding of HIV infection;
- (2) explain the potential need for confirmatory testing;
- (3) explain ways to change behavior conducive to HIV

transmission;

- (4) encourage the person to seek appropriate medical care;

and

(5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

(c) Subsection (a) does not apply if:

(1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or

(2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine

suitability for donation.

(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

- (1) \$1,000 or actual damages, whichever is greater; and
- (2) reasonable attorney fees.

(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.

(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 30, eff. Sept. 1, 1991.

#### **SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES**

Sec. 81.151. APPLICATION FOR COURT ORDER. (a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

- (1) resides;
- (2) is found; or
- (3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.



(e) A single application may be filed for a group if:

(1) the department or health authority reasonably suspects that a group of five or more persons has been exposed to or infected with a communicable disease; and

(2) each person in the group meets the criteria of this chapter for court orders for the management of a person with a communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 1, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.186, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.03, eff. September 1, 2007.

Sec. 81.1511. APPLICABILITY OF SUBCHAPTER TO GROUP. To the extent possible, and except as otherwise provided, if a group application is filed under Section 81.151(e), the provisions of this subchapter apply to the group in the same manner as they apply to an individual, except that:

(1) except as provided by Subdivision (2), any statement or determination regarding the conduct or status of a person must be made in regard to the majority of the members of the group;

(2) any finding or statement related to compliance with orders under Section 81.083 must be made for the entire group;

(3) any notice required to be provided to a person must:

(A) in addition to being sent to each individual in the group for whom the department or health authority has an address, be published in a newspaper of general circulation in the county that includes the area of the suspected contamination and any other county in which the department or health authority suspects a member of the group resides;

(B) state that the group is appointed an attorney but that a member of the group is entitled to the member's own attorney on request; and

(C) include instructions for any person who reasonably suspects that the person was at the place of the suspected exposure at the time of the suspected exposure to provide the person's name, address, and county of residence to the department or health

authority; and

(4) an affidavit of medical evaluation for the group may be based on evaluation of one or more members of the group if the physician reasonably believes that the condition of the individual or individuals represents the condition of the majority of the members of the group.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.04, eff. September 1, 2007.

Sec. 81.152. FORM OF APPLICATION. (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

(d) A group application must contain the following information according to the applicant's information and belief:

(1) a description of the group and the location where the members of the group may be found;

(2) a narrative of how the group has been exposed or infected;

(3) an estimate of how many persons are included in the group;

(4) to the extent known, a list containing the name,

address, and county of residence in this state of each member of the group;

(5) if the applicant is unable to obtain the name and address of each member of the group:

(A) a statement that the applicant has sought each of the unknown names and addresses; and

(B) the reason that the names and addresses are unavailable; and

(6) a statement, to be included only in an application for inpatient treatment, that the members of the group fail or refuse to comply with written orders of the department or health authority under Section 81.083, if applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 2, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.187, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.05, eff. September 1, 2007.

Sec. 81.153. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.1531. APPOINTMENT OF ATTORNEY FOR GROUP. (a) A judge shall appoint an attorney to represent a group identified in a group application under Section 81.151(e) and shall appoint an attorney for each person who is listed in the application if requested by a person in the group who does not have an attorney.

(b) To the extent possible, the provisions of this chapter that

apply to an individual's attorney apply to a group's attorney.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.06, eff. September 1, 2007.

Sec. 81.154. SETTING ON APPLICATION. (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 3, eff. May 23, 1997.

Sec. 81.155. NOTICE. (a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

- (1) the person's parent, if the person is a minor;
- (2) the person's appointed guardian, if the person is the subject of a guardianship; or
- (3) each managing and possessory conservator, that has been appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.156. DISCLOSURE OF INFORMATION. (a) The person's attorney may request information from the attorney general or the municipal, county, or district attorney, as appropriate, in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the attorney general or the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;

(2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 4, eff. May 23, 1997.

Sec. 81.157. DISTRICT COURT JURISDICTION. (a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

(b) If a person subject to an order for temporary management is receiving services in a county other than the county in which the court that entered the temporary order is located and requires extended management, the county in which the temporary order was issued shall pay the expenses of transporting the person back to the county for the hearing unless the court that entered the temporary

order arranges with the appropriate court in the county in which the person is receiving services to hold the hearing on the application for extended order before the temporary order expires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 5, eff. May 23, 1997.

Sec. 81.158. AFFIDAVIT OF MEDICAL EVALUATION. (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

- (1) the name and address of the examining physician, if applicable;
- (2) the name and address of the person examined or to be examined;
- (3) the date and place of the examination, if applicable;
- (4) a brief diagnosis of the examined person's physical and mental condition, if applicable;
- (5) the period, if any, during which the examined person has been under the care of the examining physician;
- (6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and
- (7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:
  - (A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and
  - (B) as a result of that communicable disease the examined person:
    - (i) is likely to cause serious harm to himself; or
    - (ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the

department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.159. DESIGNATION OF FACILITY. (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing home or custodial care home required to be licensed under Chapter 242; or

(2) an intermediate care facility for the mentally retarded required to be licensed under Chapter 252.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable law for providing health care services.

(d) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) This section does not apply to a person for whom treatment in a private health facility is proposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 6, eff. May 23, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.07, eff. September 1, 2007.

Sec. 81.160. LIBERTY PENDING HEARING. The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.161. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 7, eff. May 23, 1997.

Sec. 81.162. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its



opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the management of a person with a communicable disease under Section 81.151 if:

(1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and

(2) the judge or magistrate determines based on evidence taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable

disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to the public health exists because the person may attempt to leave the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.188, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.08, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 5, eff. June 14, 2013.

Sec. 81.163. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility.

(f) A protective custody order issued under Section 81.162 may direct an emergency medical services provider to provide an ambulance

and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 6, eff. June 14, 2013.

Sec. 81.164. APPOINTMENT OF ATTORNEY. (a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

- (1) that the person has been placed under a protective custody order;
- (2) the grounds for the order; and
- (3) the time and place of the hearing to determine probable cause.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.165. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing until the period of disaster is ended.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.09, eff. September 1, 2007.

Sec. 81.166. ORDER FOR CONTINUED DETENTION. (a) The magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his or her attorney \_\_\_\_\_ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_ (date of notice).

I have examined the affidavit of medical evaluation and \_\_\_\_\_ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or herself (yes \_\_\_\_ or no \_\_\_\_ ) or others (yes \_\_\_\_ or no \_\_\_\_ ) such that (s)he cannot be at liberty pending final hearing because (s)he is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and (s)he has failed or refused to comply with the orders of the health authority or the Texas Department of Health delivered on \_\_\_\_\_ (date of service) \_\_\_\_\_.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.167. DETENTION IN PROTECTIVE CUSTODY. (a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner or by a health authority and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime only with the consent of the medical director of the facility and only if the facility has respiratory isolation capability for airborne communicable diseases. The person may not be detained in a nonmedical facility under this subsection for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a nonmedical facility under Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 8, eff. May 23, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.10, eff. September 1, 2007.

Sec. 81.168. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

- (1) the location at which the person was apprehended;
- (2) the person's place of residence in this state; or
- (3) another suitable location.

(c) The head of a facility shall discharge a person held under a protective custody order if:

(1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster, that a probable cause hearing was held and the person's continued detention was authorized;

(2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or

(3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.11, eff. September 1, 2007.

Sec. 81.169. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or

the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.0001, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.12, eff. September 1, 2007.

Sec. 81.170. RIGHT TO JURY. (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application



is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 9, eff. May 23, 1997.

Sec. 81.171. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health;

(2) has refused or failed to follow the orders of the health authority if the application is for inpatient treatment; and

(3) meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 10, eff. May 23, 1997.

Sec. 81.172. ORDER FOR TEMPORARY MANAGEMENT. (a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:  
(A) is likely to cause serious harm to himself; or  
(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 11, eff. May 23, 1997.

Sec. 81.173. ORDER FOR EXTENDED MANAGEMENT. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:  
(A) is likely to cause serious harm to himself; or  
(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The

testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 12, eff. May 23, 1997.

Sec. 81.174. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 13, eff. May 23, 1997.

Sec. 81.175. COURT-ORDERED OUTPATIENT SERVICES. (a) The

court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order;

and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.176. DESIGNATION OF FACILITY. In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person to a health care facility designated by the commissioner or a health authority in accordance with Section 81.159.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.13, eff. September 1, 2007.

Sec. 81.177. COMMITMENT TO PRIVATE FACILITY. (a) The court may order a person committed to a private health care facility at no expense to the state if the court receives:

(1) an application signed by the person or the person's

guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and

(2) a written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter.

(b) Consistent with Subsection (a), the court may order a person committed to a private health care facility at no expense to the state, a county, a municipality, or a hospital district if:

(1) a state of disaster or a public health disaster has been declared or an area quarantine is imposed under Section 81.085;

(2) the health care facility is located within the disaster area or area quarantine, as applicable; and

(3) the judge determines that there is no public health care facility within the disaster area or area quarantine, as applicable, that has appropriate facilities and the capacity available to receive and treat the person.

(c) Nothing in this section prevents a health care facility that accepts a person under this section from pursuing reimbursement from any appropriate source, such as a third-party public or private payor or disaster relief fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.14, eff. September 1, 2007.

Sec. 81.178. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.

(b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.

(c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's mental condition and the necessity of the person's continued commitment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.179. TRANSPORTATION OF PERSON. (a) The court shall order the sheriff or constable to transport the person to the designated health care facility.

(b) A female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 14, eff. May 23, 1997.

Sec. 81.180. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.181. ACKNOWLEDGEMENT OF DELIVERY. The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

(1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and

(2) file a copy of the statement with the clerk of the committing court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## Sec. 81.182. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

(a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall request the court that entered the commitment order to modify the order to provide for outpatient care. At the request of the department, the attorney general shall request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 15, eff. May 23, 1997.

Sec. 81.183. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, on the motion of a municipal, county, or district attorney at the request of the health authority, on the motion of the

attorney general at the request of the department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 16, eff. May 23, 1997.

Sec. 81.184. ORDER FOR TEMPORARY DETENTION. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person



and the person's attorney a written notice that contains:

- (1) a statement that the person has been placed under a temporary detention order;
- (2) the grounds for the order; and
- (3) the time and place of the modification hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 17, eff. May 23, 1997.

Sec. 81.185. APPREHENSION AND RELEASE UNDER ORDER FOR TEMPORARY DETENTION. (a) The order for temporary detention shall direct a peace officer, including a sheriff or constable, to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.

(b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.

(c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.

(d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired.

(e) The order for temporary detention may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health care facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 7, eff. June 14, 2013.

Sec. 81.186. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:

(1) the person has not complied with the court's order; or

(2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.

(c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.187. RENEWAL OF ORDER FOR EXTENDED MANAGEMENT. (a) A municipal, county, or district attorney, as appropriate, at the request of the health authority, shall file an application to renew an order for extended management. At the request of the department, the attorney general shall file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or

department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 18, eff. May 23, 1997.

Sec. 81.188. MOTION FOR REHEARING. (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.189. REQUEST FOR REEXAMINATION. (a) A person subject

to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.190. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have

an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

(g) If the department or health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge or the public would jeopardize the health and safety of those persons and the public health, the judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 8, eff. June 14, 2013.

Sec. 81.191. APPEAL. (a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.192. CONTINUING CARE PLAN BEFORE DISCHARGE. The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.193. PASS FROM INPATIENT CARE. (a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.194. RETURN TO FACILITY. (a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

- (1) signing a certificate authorizing the person's return;  
or
- (2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.
- (b) The health authority or department may also have a person returned by signing the certificate authorized by Subsection (a)(1).
- (c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.
- (d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:
- (1) the person is absent without authority from the facility;
  - (2) the person has violated the conditions of a pass; or
  - (3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.
- (e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.
- (f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.195. DISCHARGE ON EXPIRATION OF COURT ORDER. The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.196. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or

department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

(1) a court order; or

(2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.197. CERTIFICATE OF DISCHARGE. Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.198. AUTHORIZATION FOR ADMISSION. The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.199. TRANSFER TO FEDERAL FACILITY. The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;

(2) notice of the transfer is sent to the committing court;  
and

(3) the committing court enters an order approving the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 81.200. TRANSFER OF RECORDS. The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health care facility to which the person is transferred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.201. WRIT OF HABEAS CORPUS. This subchapter does not limit a person's right to obtain a writ of habeas corpus.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.202. EFFECT ON GUARDIANSHIP. This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.203. CONFIDENTIALITY OF RECORDS. Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.204. RIGHTS SUBJECT TO LIMITATION BY HEAD OF FACILITY.

(a) A person in an inpatient health care facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility; and
- (3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not

restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.205. NOTIFICATION OF RIGHTS. A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

- (1) orally, in simple, nontechnical terms;
- (2) in writing that, if possible, is in the person's primary language; and
- (3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.206. GENERAL RIGHTS RELATING TO TREATMENT. A person receiving health services under this subchapter has the right to:

- (1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;
- (2) not receive unnecessary or excessive medication;
- (3) refuse to participate in a research program; and
- (4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.207. ADEQUACY OF TREATMENT. (a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with accepted standards of medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the

patient from transmitting the communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 31, eff. Sept. 1, 1991.

Sec. 81.208. PERIODIC EXAMINATION. The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this subchapter at least once every seven days and more frequently as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.209. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.210. COSTS. (a) A county shall pay the costs for a hearing or proceeding under this subchapter if a health authority:

(1) initiates an application for a court order under Section 81.151; or

(2) has an application for court-ordered management transferred to it under Section 81.157.

(b) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-ordered personal services;

(4) security; and

(5) expenses of transportation to a designated facility.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the person who is the subject of the application; or

(2) a person or estate liable for the person's support.

(d) The department shall pay the costs of returning a person absent without authorization unless the person is able to pay the costs.

Added by Acts 1997, 75th Leg., ch. 242, Sec. 19 eff. May 23, 1997.

Sec. 81.211. FILING AND STATUS OF FOREIGN COURT ORDERS. (a) In the case of a person who is not a resident of this state and who may be admitted to a state chest hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the state chest hospital to which the person will be admitted is located.

(c) A filed foreign court order that authorizes the commitment of a person to a health care facility for inpatient care may be enforced in the same manner as a court order of the court in which it is filed.

(d) A foreign court order that authorizes the commitment of a person to a health care facility for inpatient care is subject to the contractual agreement with the foreign state entered into under Section 13.046.

Added by Acts 2003, 78th Leg., ch. 107, Sec. 4, eff. Sept. 1, 2003.

Sec. 81.212. EVADING OR RESISTING APPREHENSION OR TRANSPORT; CRIMINAL PENALTY. (a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(b) A person commits an offense if the person assists a person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter in resisting or evading

apprehension by a sheriff, constable, or other peace officer enforcing the order or in resisting or evading transport to an appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 9, eff. June 14, 2013.

#### **SUBCHAPTER H. BLOODBORNE PATHOGEN EXPOSURE CONTROL PLAN**

Sec. 81.301. DEFINITIONS. In this subchapter:

(1) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

(2) "Engineered sharps injury protection" means:

(A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or

(B) a physical attribute built into any other type of needle device, into a nonneedle sharp, or into a nonneedle infusion safety securement device that effectively reduces the risk of an exposure incident.

(3) "Governmental unit" means:

(A) this state and any agency of the state, including a department, bureau, board, commission, or office;

(B) a political subdivision of this state, including any municipality, county, or special district; and

(C) any other institution of government, including an institution of higher education.

(4) "Needleless system" means a device that does not use a needle and that is used:

(A) to withdraw body fluids after initial venous or arterial access is established;

(B) to administer medication or fluids; or

(C) for any other procedure involving the potential for

an exposure incident.

(5) "Sharp" means an object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

(6) "Sharps injury" means any injury caused by a sharp, including a cut, abrasion, or needlestick.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.302. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a governmental unit that employs employees who:

(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.303. EXPOSURE CONTROL PLAN. The department shall establish an exposure control plan designed to minimize exposure of employees described by Section 81.302 to bloodborne pathogens. In developing the plan, the department must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;

(2) training and educational requirements for employees;

(3) measures to increase vaccinations of employees; and

(4) increased use of personal protective equipment by employees.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.304. MINIMUM STANDARDS. The board by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.305. NEEDLELESS SYSTEMS. (a) The board by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

(b) The recommendation adopted under Subsection (a) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an evaluation committee has established that the use of needleless systems and sharps with engineered sharps injury protection will jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the committee's decision shall be submitted to the department annually.

(c) At least half of the members of an evaluation committee established by a governmental unit to implement Subsection (b) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.306. SHARPS INJURY LOG. (a) The board by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the department and must include:

- (1) the date and time of the exposure incident;
- (2) the type and brand of sharp involved in the exposure incident; and
- (3) a description of the exposure incident, including:
  - (A) the job classification or title of the exposed

employee;

(B) the department or work area where the exposure incident occurred;

(C) the procedure that the exposed employee was performing at the time of the incident;

(D) how the incident occurred;

(E) the employee's body part that was involved in the exposure incident; and

(F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(b) Information regarding which recommendations under Section 81.305(a) were adopted by the governmental entity shall be included in the log.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.307. DEVICE REGISTRATION. (a) The department, in accordance with rules adopted by the board, shall implement a registration program for existing needleless systems and sharps with engineered sharps injury protection.

(b) The department shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that are available in the commercial marketplace and registered with the department to assist governmental units to comply with this subchapter.

(c) The department shall charge a fee to register a device in



an amount established by the board. The fees collected under this section may be appropriated only to the department to implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. ANIMAL-BORNE DISEASES**

Sec. 81.351. DEFINITION. In this subchapter, "pet store" means a retail store that sells animals as pets.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.352. WARNING SIGN REQUIRED; RULES. (a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The department shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.353. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this section or a rule adopted under this section.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed \$500 for each month a violation

continues.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

#### **CHAPTER 82. CANCER REGISTRY**

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Texas Cancer Incidence Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 33, eff. Sept. 1, 1991.

Sec. 82.002. DEFINITIONS. In this chapter:

(1) "Cancer" includes:

(A) a large group of diseases characterized by uncontrolled growth and spread of abnormal cells;

(B) any condition of tumors having the properties of anaplasia, invasion, and metastasis;

(C) a cellular tumor the natural course of which is fatal, including malignant and benign tumors of the central nervous system; and

(D) malignant neoplasm, other than nonmelanoma skin cancers such as basal and squamous cell carcinomas.

(2) "Clinical laboratory" means an accredited facility in which:

(A) tests are performed identifying findings of anatomical changes; and

(B) specimens are interpreted and pathological

diagnoses are made.

(3) "Health care facility " means:

(A) a general or special hospital as defined by Chapter 241 (Texas Hospital Licensing Law);

(B) an ambulatory surgical center licensed under Chapter 243;

(C) an institution licensed under Chapter 242; or

(D) any other facility, including an outpatient clinic, that provides diagnosis or treatment services to patients with cancer.

(4) "Health care practitioner" means:

(A) a physician as defined by Section 151.002, Occupations Code; or

(B) a person who practices dentistry as described by Section 251.003, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 1, eff. Sept. 1, 2001.

Sec. 82.003. APPLICABILITY OF CHAPTER. This chapter applies to records of cases of cancer, diagnosed on or after January 1, 1979, and to records of all ongoing cancer cases diagnosed before January 1, 1979.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 2, eff. Sept. 1, 2001.

Sec. 82.004. REGISTRY REQUIRED. The board shall maintain a cancer registry for the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 82.005. CONTENT OF REGISTRY. (a) The cancer registry must be a central data bank of accurate, precise, and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure, and control of cancer.

(b) The cancer registry must include:

(1) a record of the cases of cancer that occur in the state; and

(2) information concerning cancer cases as the board considers necessary and appropriate for the recognition, prevention, cure, or control of cancer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 3, eff. Sept. 1, 2001.

Sec. 82.006. BOARD POWERS. To implement this chapter, the board may:

(1) adopt rules that the board considers necessary;

(2) execute contracts that the board considers necessary;

(3) receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, health care facilities, and health care practitioners to record and analyze the data directly related to those diseases;

(4) compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel, and the general public;

(5) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible;

(6) receive and use gifts made for the purpose of this chapter; and

(7) limit cancer reporting activities under this chapter to specified geographic areas of the state to ensure optimal use of funds available for obtaining the data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 4, eff. Sept. 1, 2001.

Sec. 82.007. REPORTS. (a) The department shall publish an annual report to the legislature of the information obtained under this chapter.

(b) The department, in cooperation with other cancer reporting organizations and research institutions, may publish reports the department determines are necessary or desirable to carry out the

purpose of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 34, eff. Sept. 1, 1991.

Sec. 82.008. DATA FROM MEDICAL RECORDS. (a) To ensure an accurate and continuing source of data concerning cancer, each health care facility, clinical laboratory, and health care practitioner shall furnish to the board or its representative, on request, data the board considers necessary and appropriate that is derived from each medical record pertaining to a case of cancer that is in the custody or under the control of the health care facility, clinical laboratory, or health care practitioner. The department may not request data that is more than three years old unless the department is investigating a possible cancer cluster.

(b) A health care facility, clinical laboratory, or health care practitioner shall furnish the data requested under Subsection (a) in a reasonable format prescribed by the department and within six months of the patient's admission, diagnosis, or treatment for cancer unless a different period is prescribed by the United States Department of Health and Human Services.

(c) The data required to be furnished under this section must include patient identification and diagnosis.

(d) The department may access medical records that would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified patient from the following sources:

(1) a health care facility or clinical laboratory providing screening, diagnostic, or therapeutic services to a patient with respect to cancer; or

(2) a health care practitioner diagnosing or providing treatment to a patient with cancer, except as described by Subsection (g).

(e) The board shall adopt procedures that ensure adequate notice is given to the health care facility, clinical laboratory, or health care practitioner before the department accesses data under Subsection (d).

(f) A health care facility, clinical laboratory, or health care practitioner that knowingly or in bad faith fails to furnish data as

required by this chapter shall reimburse the department or its authorized representative for the costs of accessing and reporting the data. The costs reimbursed under this subsection must be reasonable, based on the actual costs incurred by the department or by its authorized representative in the collection of data under Subsection (d), and may include salary and travel expenses. The department may assess a late fee on an account that is 60 days or more overdue. The late fee may not exceed one and one-half percent of the total amount due on the late account for each month or portion of a month the account is not paid in full. A health care facility, clinical laboratory, or health care practitioner may request that the department conduct a hearing to determine whether reimbursement to the department under this subsection is appropriate.

(g) The department may not require a health care practitioner to furnish data or provide access to records if:

(1) the data or records pertain to cases reported by a health care facility providing screening, diagnostic, or therapeutic services to cancer patients that involve patients referred directly to or previously admitted to the facility; and

(2) the facility reported the same data the practitioner would be required to report.

(h) The data required to be furnished under this section may be shared with cancer registries of health care facilities subject to the confidentiality provisions in Section 82.009.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 35, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 343, Sec. 1, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 5, eff. Sept. 1, 2001.

Sec. 82.009. CONFIDENTIALITY. (a) Reports, records, and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this section or Section 82.008(h). The reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or public or private entities that the department determines are necessary to

carry out the intent of this chapter.

(b) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents identification of individuals, health care facilities, clinical laboratories, or health care practitioners;

(2) with the consent of each person identified in the information; or

(3) to promote cancer research, including release of information to other cancer registries and appropriate state and federal agencies, under rules adopted by the board to ensure confidentiality as required by state and federal laws.

(c) A state employee may not testify in a civil, criminal, special, or other proceeding as to the existence or contents of records, reports, or information concerning an individual whose medical records have been used in submitting data required under this chapter unless the individual consents in advance.

(d) Data furnished to a cancer registry or a cancer researcher under Subsection (b) or Section 82.008(h) is for the confidential use of the cancer registry or the cancer researcher, as applicable, and is subject to Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 343, Sec. 2, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 6, eff. Sept. 1, 2001.

Sec. 82.010. IMMUNITY FROM LIABILITY. The following persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter:

(1) a health care facility or clinical laboratory;

(2) an administrator, officer, or employee of a health care facility or clinical laboratory;

(3) a health care practitioner or employee of a health care practitioner; and

(4) an employee of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 7, eff. Sept. 1, 2001.

Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED. This chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by the board or its representatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 84. REPORTING OF OCCUPATIONAL CONDITIONS**

Sec. 84.001. SHORT TITLE. This chapter may be cited as the Occupational Condition Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.002. DEFINITIONS. In this chapter:

(1) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, a certificate or license, or membership in a regional or national association.

(2) "Occupational condition " means a disease, abnormal health condition, or laboratory finding that is caused by or is related to exposures in the workplace.

(3) "Reportable condition " means a disease, condition, or laboratory finding required to be reported under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.003. REPORTABLE CONDITIONS; RULES. (a) Asbestosis and silicosis are occupational conditions that are reportable to the department.

(b) Blood lead levels in adults are laboratory findings that are reportable to the department as provided by board rule.

(c) The board may adopt rules that require other occupational



conditions to be reported under this chapter. Before the board requires another occupational condition to be reported, the board must find that the condition:

- (1) has a well-understood etiology;
- (2) results predominantly from occupational exposures; and
- (3) is preventable.

(d) The board shall maintain a list of reportable conditions.

(e) The board shall adopt rules necessary to administer and implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.004. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable conditions to the department:

(1) a physician who diagnoses or treats the individual with the condition;

(2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of the condition; and

(3) a health professional.

(b) The department may contact a physician attending a person with a case or a suspected case of an occupational condition.

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information necessary to achieve the purposes of this chapter, including the person's name, address, age, sex, race, occupation, employer, and attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 3, eff. May 23, 1997.

Sec. 84.005. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purpose of identifying, reporting, or preventing those occupational conditions that have been determined by the board to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this chapter, the department shall evaluate the reports of occupational conditions to establish the nature and magnitude of the hazards associated with those conditions, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this chapter and other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 4, eff. May 23, 1997.

Sec. 84.006. CONFIDENTIALITY. (a) All information and records relating to reportable conditions are confidential. That information may not be released or made public on subpoena or otherwise, except that release of information may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this chapter are kept confidential and protected from release to unauthorized persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 5, eff. May 23, 1997.

Sec. 84.007. INVESTIGATIONS. (a) The department shall investigate the causes of occupational conditions and methods of prevention.

(b) In performing the commissioner's duty to prevent an occupational condition, the commissioner or the commissioner's designee may enter at reasonable times and inspect within reasonable limits all or any part of an area, structure, or conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this section may take samples of materials present on the premises, including samples of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis.

(d) Persons securing the required samples may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 6, eff. May 23, 1997.

**CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN  
IMMUNODEFICIENCY VIRUS INFECTION**

**SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATION PROGRAMS**

Sec. 85.001. SHORT TITLE. This chapter may be cited as the Human Immunodeficiency Virus Services Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.002. DEFINITIONS. In this chapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "Communicable disease" has the meaning assigned by Section 81.003 (Communicable Disease Prevention and Control Act).

(3) "Contact tracing" means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.

(4) "HIV" means human immunodeficiency virus.

(5) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; and

(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(6) "Testing program" means a medical program to test for AIDS, HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.003. DEPARTMENT AS LEAD AGENCY AND PRIMARY RESOURCE. The department, in the discharge of its duty to protect the public health, shall act as the lead agency for AIDS and HIV policy for Texas and is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 708, Sec. 2, eff. Sept. 1, 1993.

Sec. 85.004. EDUCATION PROGRAMS. (a) The department shall develop model education programs to be available to educate the public about AIDS and HIV infection.

(b) As part of the programs, the department shall develop a model educational pamphlet about methods of transmission and prevention of HIV infection, about state laws relating to the transmission, and to conduct that may result in the transmission of HIV.

(c) The programs must be scientifically accurate and factually correct and designed to:

(1) communicate to the public knowledge about methods of transmission and prevention of HIV infection;

(2) educate the public about transmission risks in social, employment, and educational situations;

(3) educate health care workers and health facility

employees about methods of transmission and prevention in their particular workplace environments; and

(4) educate the public about state laws relating to the transmission and conduct that may result in the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.005. SPECIAL COMPONENTS OF EDUCATION PROGRAMS. (a) The department shall include in the education programs special components designed to reach:

- (1) persons with behavior conducive to HIV transmission;
- (2) persons younger than 18 years of age; and
- (3) minority groups.

(b) In designing education programs for ethnic minorities and in assisting local community organizations in developing education programs for minority groups, the department shall ensure that the programs reflect the nature and spread of HIV infection in minorities in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.006. EDUCATION PROGRAMS FOR DISABLED PERSONS. (a) The department shall develop and promote HIV education and prevention programs specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In designing those programs, the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

(c) To the maximum extent possible, state-funded HIV education and prevention programs shall be accessible to persons with physical disabilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.007. EDUCATION PROGRAMS FOR MINORS. (a) The department shall give priority to developing model education programs for persons younger than 18 years of age.

(b) The materials in the education programs intended for

persons younger than 18 years of age must:

(1) emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health and the most effective ways to prevent HIV infection, sexually transmitted diseases, and unwanted pregnancies; and

(2) state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code.

(c) In addition, the materials in the education program intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

(3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and

(4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 24.01, eff. Sept. 1, 1999.

Sec. 85.008. DISTRIBUTION OF EDUCATION PROGRAMS. (a) The department shall determine where HIV education efforts are needed in this state and shall initiate programs in those areas by identifying local resources.

(b) The department shall assist communities, especially those in rural areas, in establishing self-sustaining education programs, using public and private resources.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.009. EDUCATION PROGRAMS AVAILABLE ON REQUEST. The department shall make the education programs available to local governments and private businesses on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department, the Texas Department of Mental Health and Mental Retardation, or the Texas Department of Human Services shall require its employees to complete an educational course about HIV infection based on the model education programs developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.011. CONTRACTS FOR EDUCATION PROGRAMS. (a) The department may contract with any person, other than a person who advocates or promotes conduct that violates state law, for the design, development, and distribution of education programs.

(b) This section does not restrict an education program from providing accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.012. MODEL WORKPLACE GUIDELINES. (a) To ensure consistent public policy, the department, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions.

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases;

and

(6) employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

(c) The department shall develop more specific model workplace guidelines for employers in businesses with educational, correctional, health, or social service responsibilities.

(d) The department shall make the model workplace guidelines available on request.

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the board under this section.

(f) This chapter does not create a new cause of action for a violation of workplace guidelines.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.013. FUNDING INFORMATION. (a) The department shall:

(1) maintain current information on public and private sources of funding for HIV-related prevention, education, treatment, and social support services; and

(2) maintain information on the type, amount, and sources of funding for HIV-related prevention, education, treatment, and social support services being provided throughout the state.

(b) To encourage and maximize the use of federal and private funds, the department shall forward the information as soon as possible after receipt to public and nonprofit agencies that may be eligible for funding and shall make the information available to public and private entities on request.

(c) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.014. TECHNICAL ASSISTANCE TO COMMUNITY ORGANIZATIONS.

(a) The department shall provide technical assistance to nonprofit community organizations to maximize the use of limited resources and volunteer efforts and to expand the availability of health care,



education, prevention, and social support services needed to address the HIV epidemic.

(b) The department shall provide technical assistance in:

(1) recruiting, training, and effectively using volunteers in the delivery of HIV-related services;

(2) identifying funding opportunities and sources, including information on developing sound grant proposals; and

(3) developing and implementing effective service delivery approaches for community-based health care, education, prevention, and social support services pertaining to HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.015. CONTRACT FOR SERVICES; DURATION. (a) The department may contract with an entity to provide the services required by Subchapters A through F if:

(1) the contract would minimize duplication of effort and would deliver services cost-effectively; and

(2) the contracting entity does not advocate or promote conduct that violates state law.

(b) Subsection (a)(2) does not restrict an education program from providing accurate information about ways to reduce the risk of exposure to or transmission of HIV.

(c) The department may audit an entity contracting with the department under Subsection (a).

(d) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out Subsections (a) through (c).

(e) A contract entered into by the department under this subchapter may not be for a term of more than one year, except that a contract may be renewed without a public hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.016. RULES. The board may adopt rules necessary to implement Subchapters A through F.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

**SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS**

## Sec. 85.031. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS.

The department shall establish and administer a state grant program to nonprofit community organizations for:

- (1) HIV education, prevention, and risk reduction programs; and
- (2) treatment, health, and social service programs for persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The board may adopt rules relating to:

- (1) the services that may be furnished under the program;
- (2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and
- (3) a process for resolving conflicts between the department and a program receiving money under this subchapter.

(b) Board or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the board shall attempt to:

- (1) coordinate the use of federal, local, and private funds;
- (2) encourage the provision of community-based services;
- (3) address needs that are not met by other sources of funding;
- (4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and
- (5) encourage cooperation among local service providers.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent unnecessary duplication of services, the board and the department shall seek to coordinate the services provided by eligible programs under Subchapters A through G with existing federal, state, and local

programs.

(b) The department shall consult with the Texas Department of Human Services to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the Texas Department of Human Services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.034. APPLICATION PROCEDURES AND ELIGIBILITY GUIDELINES.

(a) The department shall establish application procedures and eligibility guidelines for the state grants under this subchapter.

(b) Application procedures must include regional public hearings after reasonable notice in the region in which the community organization is based before awarding an initial grant or grants totalling more than \$25,000 annually.

(c) Before the 10th day before the date of the public hearing, notice shall be given to each state representative and state senator who represents any part of the region in which any part of the grant will be expended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.035. APPLICANT INFORMATION. An applicant for a state grant under this subchapter shall submit to the department for approval:

(1) a description of the objectives established by the applicant for the conduct of the program;

(2) documentation that the applicant has consulted with appropriate local officials, community groups, and individuals with expertise in HIV education and treatment and knowledge of the needs of the population to be served;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information requested by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.036. AWARDING OF GRANTS. (a) In awarding grants for education programs under this subchapter, the department shall give special consideration to nonprofit community organizations whose primary purpose is serving persons younger than 18 years of age.

(b) In awarding grants for treatment, health, and social services, the department shall endeavor to distribute grants in a manner that prevents unnecessary duplication of services within a community.

(c) In awarding grants for education programs, the department shall endeavor to complement existing education programs in a community, to prevent unnecessary duplication of services within a community, to provide HIV education programs for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV education programs where none exist, and to promote early intervention and treatment of persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.037. RESTRICTIONS ON GRANTS. (a) The department may not award a grant to an entity or community organization that advocates or promotes conduct that violates state law.

(b) This section does not prohibit the award of a grant to an entity or community organization that provides accurate information about ways to reduce the risk of exposure to or transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.038. RESTRICTIONS ON FUNDS. (a) The department may not use more than five percent of the funds appropriated for the grant program to employ sufficient staff to review and process grant applications, monitor and evaluate the effectiveness of funded programs, and provide technical assistance to grantees.

(b) Not more than one-third of the funds available under this subchapter may be used for HIV education, prevention, and risk reduction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.039. INFORMATION PROVIDED BY FUNDED PROGRAM. (a) A program funded with a grant under this subchapter shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service.

(b) Information and educational materials developed with a grant awarded under this subchapter must contain materials and be presented in a manner that is specifically directed to the group for which the materials are intended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.040. EVALUATION OF FUNDED PROGRAMS. (a) The department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in programs funded with grants under this subchapter.

(b) An organization that receives funding under the program shall:

(1) collect and maintain relevant data as required by the department; and

(2) submit to the department copies of all material the organization has printed or distributed relating to HIV infection.

(c) The department shall provide prompt assistance to grantees in obtaining materials and skills necessary to collect and report the data required under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.041. RECORDS AND REPORTS. (a) The department shall require each program receiving a grant under this subchapter to maintain records and information specified by the department.

(b) The board may adopt rules relating to the information a program is required to report to the department and shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by programs funded under this subchapter. Before December 1 of each year, the department shall prepare a report that is available to the public and that summarizes data regarding the

type, level, quality, and cost-effectiveness of services provided under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.042. FINANCIAL RECORDS. (a) The department shall review periodically the financial records of a program funded with a grant under this subchapter.

(b) As a condition of accepting a grant under this subchapter, a community organization must allow the department to periodically review the financial records of that organization.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.043. DUE PROCESS. The department may provide a due process hearing procedure for the resolution of conflicts between the department and a program funded with a state grant under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.044. ADVISORY COMMITTEE. The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. HIV MEDICATION PROGRAM**

Sec. 85.061. HIV MEDICATION PROGRAM. (a) The Texas HIV medication program is established in the department.

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.062. ELIGIBILITY. (a) To be eligible for the program, an individual:

- (1) must not be eligible for Medicaid benefits;
- (2) must meet financial eligibility criteria set by board rule;
- (3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and
- (4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the board.

(b) The department shall give priority to participation in the program to eligible individuals younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The board by rule shall establish:

- (1) application and distribution procedures;
- (2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and
- (3) appellate procedures to resolve any eligibility or funding conflicts.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.064. FUNDING. (a) The department may accept and use local, state, and federal funds and private donations to fund the program.

(b) State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available.

(c) A hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization may participate in the program by sending funds to the department for the purpose of providing assistance to clients for the purchase of HIV medication. A hospital district may send funds obtained from any source, including taxes levied by the district.

(d) The department shall deposit money received under this section in the state treasury to the credit of the HIV medication fund and to the credit of a special account in that fund that shall be established for each entity sending funds under this section.

(e) Funds received from a hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization under this section may be used only to provide assistance to clients of that entity. The funds may be supplemented with other funds available for the purpose of the program.

(f) Funds appropriated by the General Appropriations Act may not be transferred from other line items for the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.065. SLIDING FEE SCALE TO PURCHASE MEDICATION. The department may institute a sliding fee scale to help eligible HIV-infected individuals purchase medications under the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING**

Sec. 85.081. MODEL PROTOCOLS FOR COUNSELING AND TESTING. (a) The department shall develop model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request.

(b) A testing program shall adopt and comply with the model protocols developed by the department under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.082. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary HIV testing programs in each public health region to make confidential counseling and testing available. The department shall complete contact tracing after a confirmed positive test.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.



(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who is injured by an intentional violation of Subsection (c) may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

- (1) \$1,000 or actual damages, whichever is greater; and
- (2) reasonable attorney fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.083. REGISTRATION OF TESTING PROGRAM. (a) A person may not advertise or represent to the public that the person conducts a testing program for AIDS, HIV infection, or related conditions without registering with the department.

(b) A hospital licensed under Chapter 241 (Texas Hospital Licensing Law) or a physician licensed under Subtitle B, Title 3, Occupations Code, is not required to be registered under this section unless the hospital or physician advertises or represents to the public that the hospital or physician conducts or specializes in testing programs for AIDS, HIV infection, or related conditions.

(c) The department may assess and collect a registration fee in an amount that does not exceed the estimated costs of administering this section.

(d) A person who violates Subsection (a) is liable for a civil penalty of \$1,000 for each day of a continuing violation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.773, eff. Sept. 1, 2001.

Sec. 85.084. FOR-PROFIT TESTING PROGRAM. A testing program that operates for profit, that advertises or represents to the public that it conducts or specializes in testing programs, and that is required to register under Section 85.083 shall:

(1) obtain the informed consent of the person to be tested before conducting the test; and

(2) provide an itemized statement of charges to the person tested or counseled.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.085. PHYSICIAN SUPERVISION OF MEDICAL CARE. A licensed physician shall supervise any medical care or procedure provided under a testing program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.086. REPORTS. A testing program shall report test results for HIV infection in the manner provided by Chapter 81 (Communicable Disease Prevention and Control Act).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.087. TRAINING OF COUNSELORS. (a) The department shall develop and offer a training course for persons providing HIV counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department.

(d) The board shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

(e) The department may contract for the training of counselors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.088. STATE-FUNDED HEALTH CLINICS. (a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:

(1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide voluntary, anonymous, and affordable counseling and testing programs concerning HIV infection or provide referrals to those programs.

(b) Information provided under Subsection (a)(1) shall be routinely incorporated into patient education and counseling in clinics specializing in sexually transmitted diseases and women's reproductive health.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.089. DISCIPLINARY ACTION. This subchapter does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

#### **SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS**

Sec. 85.111. EDUCATION OF STATE EMPLOYEES. (a) Each state agency annually shall provide to each state employee an educational pamphlet about:

(1) methods of transmission and prevention of HIV infection;

(2) state laws relating to the transmission of HIV infection; and

(3) conduct that may result in the transmission of HIV infection.

(b) The educational pamphlet shall be provided to a newly hired state employee on the first day of employment.

(c) The educational pamphlet shall be based on the model developed by the department and shall include the workplace guidelines adopted by the state agency.

(d) The department shall prepare and distribute to each state

agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.112. WORKPLACE GUIDELINES. (a) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection.

(b) The workplace guidelines shall incorporate at a minimum the model workplace guidelines developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS. An entity that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

- (1) the Texas Commission on Alcohol and Drug Abuse;
- (2) the Texas Commission for the Blind;
- (3) the Texas Commission for the Deaf and Hard of Hearing;
- (4) the Texas Juvenile Probation Commission;
- (5) the Texas Department of Criminal Justice;
- (6) the Texas Youth Commission;
- (7) the department;
- (8) the Texas Department of Human Services;
- (9) the Texas Department of Mental Health and Mental Retardation; and
- (10) the Texas Rehabilitation Commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 835, Sec. 25, eff. Sept. 1, 1995.

Sec. 85.114. EDUCATION OF CERTAIN CLIENTS, INMATES, PATIENTS, AND RESIDENTS. (a) Each state agency listed in Section 85.113 shall routinely make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or

residential facilities under the agency's jurisdiction.

(b) Education available under this section shall be based on the model education program developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.115. CONFIDENTIALITY GUIDELINES. (a) Each state agency shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for clients, inmates, patients, and residents served by the agency.

(b) Each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the entity and for clients, inmates, patients, and residents served by the entity.

(c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.

(d) An entity that does not adopt confidentiality guidelines as required by Subsection (b) is not eligible to receive state funds until the guidelines are developed and implemented.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.116. TESTING AND COUNSELING FOR STATE EMPLOYEES EXPOSED TO HIV INFECTION ON THE JOB. (a) On an employee's request, a state agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if:

(1) the employee documents to the agency's satisfaction that the employee may have been exposed to HIV while performing duties of employment with that agency; and

(2) the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV.

(b) The board by rule shall prescribe the criteria that

constitute possible exposure to HIV under this section. The criteria must be based on activities the United States Public Health Service determines pose a risk of HIV infection.

(c) For the purpose of qualifying for workers' compensation or any other similar benefits or compensation, an employee who claims a possible work-related exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated an absence of HIV infection.

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The director of the workers' compensation division of the attorney general's office shall adopt rules necessary to administer this subsection.

(e) Counseling or a test conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(f) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

#### **SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE**

Sec. 85.131. RESEARCH ON NURSING CARE. To ensure a continuum of nursing care for persons with AIDS or HIV infection and related conditions who require long-term nursing care but do not require hospitalization except for acute exacerbations of their condition, the Texas Department of Human Services shall develop one or more demonstration projects to research the cost and need for services that are appropriate to provide the special care necessary for those persons and for the specific medical complications resulting from AIDS or HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.132. DEMONSTRATION PROJECTS IN NURSING FACILITIES. (a) The Texas Department of Human Services shall establish one or more

demonstration projects in nursing facilities to:

(1) assist the Texas Department of Human Services in analyzing the cost of providing care for persons with AIDS or HIV infection and related conditions authorized by this subchapter;

(2) provide test sites in designated nursing facilities to study the costs and requirements of the operation of those facilities and the provision of appropriate nursing care and other related programs and services;

(3) demonstrate the extent of the need for facilities that can provide the long-term nursing care that is required by a person with AIDS or HIV infection and related conditions when those persons are not in need of hospitalization for an acute exacerbated condition;

(4) determine the extent of the individualized nursing care required to adequately meet the specific needs of persons with AIDS or HIV infection and related conditions without imposing the costs of providing those programs and services on all facilities that currently provide nursing care to persons whose needs are different than the needs of persons with AIDS or HIV infection and related conditions; and

(5) provide one or more teaching and demonstration models for caring for persons with AIDS or HIV infection and related conditions.

(b) Participants in the demonstration project are entitled to reimbursement at a special rate that covers all the cost of the care provided.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

**SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW ENFORCEMENT AGENCIES,  
FIRE DEPARTMENTS, AND EMERGENCY MEDICAL SERVICES PROVIDERS**

Sec. 85.141. MODEL POLICIES CONCERNING PERSONS IN CUSTODY. The department, in consultation with appropriate correctional and law enforcement agencies, fire departments, and emergency medical services providers, shall develop model policies regarding the handling, care, and treatment of persons with AIDS or HIV infection who are in the custody of the Texas Department of Criminal Justice, local law enforcement agencies, municipal and county correctional facilities, and district probation departments.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.142. ADOPTION OF POLICY. (a) Each state and local law enforcement agency, fire department, emergency medical services provider, municipal and county correctional facility, and district probation department shall adopt a policy for handling persons with AIDS or HIV infection who are in their custody or under their supervision.

(b) The policy must be substantially similar to a model policy developed by the department under Section 85.141.

(c) A policy adopted under this section applies to persons who contract or subcontract with an entity required to adopt the policy under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.143. CONTENT OF POLICY. A policy adopted under this subchapter must:

(1) provide for periodic education of employees, inmates, and probationers concerning HIV;

(2) ensure that education programs for employees include information and training relating to infection control procedures and that employees have infection control supplies and equipment readily available; and

(3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

#### **SUBCHAPTER I. PREVENTION OF TRANSMISSION OF HIV AND HEPATITIS B VIRUS BY INFECTED HEALTH CARE WORKERS**

Sec. 85.201. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) the Centers for Disease Control of the United States Public Health Service have made recommendations for preventing transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) to patients in the health care setting;

(2) the Centers for Disease Control of the United States



Public Health Service have found that when health care workers adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected health care worker to a patient is small, and the risk of transmitting HIV is likely to be even smaller;

(3) the risk of transmission of HIV and HBV in health care settings will be minimized if health care workers adhere to the Centers for Disease Control of the United States Public Health Service recommendations; and

(4) health care workers who perform exposure-prone procedures should know their HIV antibody status; health care workers who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their HBsAg status and, if that is positive, should also know their HBeAg status.

(b) Any testing for HIV antibody status shall comply with Subchapters C, D, and F, Chapter 81.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.202. DEFINITIONS. In this subchapter:

(1) "Exposure-prone procedure" means a specific invasive procedure that poses a direct and significant risk of transmission of HIV or hepatitis B virus, as designated by a health professional association or health facility, as provided by Section 85.204(b)(4).

(2) "Health care worker" means a person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by this state or a person providing direct patient care in the course of a training or educational program.

(3) "Invasive procedure" means:

(A) a surgical entry into tissues, cavities, or organs;  
or

(B) repair of major traumatic injuries associated with any of the following:

(i) an operating or delivery room, emergency department, or outpatient setting, including a physician's or dentist's office;

(ii) cardiac catheterization or angiographic

procedures;

(iii) a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or

(iv) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

(4) "Universal precautions" means procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control of the United States Public Health Service.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.203. INFECTION CONTROL STANDARDS. (a) All health care workers shall adhere to universal precautions as defined by this subchapter.

(b) Health care workers with exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition resolves.

(c) All institutions of higher education and professional and vocational schools training health care workers shall provide instruction on universal precautions.

(d) Health care institutions shall establish procedures for monitoring compliance with universal precautions.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.204. MODIFICATION OF PRACTICE. (a) Except as provided by Subsections (b) and (c), a health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may not perform an exposure-prone procedure.

(b)(1) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may perform an exposure-prone procedure only if the health care worker has sought

counsel from an expert review panel and been advised under what circumstances, if any, the health care worker may continue to perform the exposure-prone procedure.

(2) An expert review panel should include the health care worker's personal physician and experts with knowledge of infectious diseases, infection control, the epidemiology of HIV and hepatitis B virus, and procedures performed by the health care worker.

(3) All proceedings and communications of the expert review panel are confidential and release of information relating to a health care worker's HIV status shall comply with Chapter 81.

(4) Health professional associations and health facilities should develop guidelines for expert review panels and identify exposure-prone procedures, as defined by this subchapter.

(c) A health care worker who performs an exposure-prone procedure as provided under Subsection (b) shall notify a prospective patient of the health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure, unless the patient is unable to consent.

(d) To promote the continued use of the talents, knowledge, and skills of a health care worker whose practice is modified because of the worker's HIV or hepatitis B virus infection status, the worker should:

(1) be provided opportunities to continue patient care activities, if practicable; and

(2) receive career counseling and job retraining.

(e) A health care worker whose practice is modified because of hepatitis B virus infection may request periodic redeterminations by the expert review panel under Subsection (b) of any change in the worker's HBeAg status due to resolution of infection or as a result of treatment.

(f) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive who performs invasive procedures not identified as exposure-prone should not have his or her practice restricted, provided the infected health care worker adheres to the standards for infection control provided in Section 85.203.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.205. DISCIPLINARY PROCEDURES. A health care worker who fails to comply with this subchapter is subject to disciplinary procedures by the appropriate licensing entity.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.206. RETENTION OF LICENSE; PERMITTED ACTS. This subchapter does not:

(1) require the revocation of the license, registration, or certification of a health care worker who is infected with HIV or hepatitis B virus;

(2) prohibit a health care worker who is infected with HIV or hepatitis B virus and who adheres to universal precautions, as defined by this subchapter, from:

(A) performing procedures not identified as exposure-prone; or

(B) providing health care services in emergency situations;

(3) prohibit a health care worker who is infected with HIV and who adheres to universal precautions from providing health care services, including exposure-prone procedures, to persons who are infected with HIV; or

(4) require the testing of health care workers.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

#### **SUBCHAPTER J. HOME COLLECTION KITS FOR HIV INFECTION TESTING**

Sec. 85.251. DEFINITIONS. In this subchapter:

(1) "Home collection kit" means a product sold to the general public and used by an individual to collect a specimen from the human body and to submit the specimen to a laboratory for testing and a report.

(2) "Service provider" means the manufacturer of a home collection kit or a person designated by the manufacturer to provide the services required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.252. PROHIBITIONS RELATING TO HOME COLLECTION KIT. A person may not market, distribute, or sell a home collection kit for HIV infection testing in this state unless the kit complies with Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.253. PROHIBITIONS RELATING TO HOME TESTING. (a) A person may not market, distribute, or sell a product to be used by a member of the public to test a specimen collected from the human body for HIV infection unless the kit complies with Chapter 431.

(b) This section does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test for HIV infection a specimen collected from the human body.

(c) A person may not require an individual to be tested for HIV infection as provided in Section 81.102.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.254. PACKAGE OF SERVICES. A home collection kit for HIV infection testing shall be sold as part of a package of services that includes:

- (1) laboratory testing by a qualified facility;
- (2) reporting of test results;
- (3) verification of positive test results;
- (4) counseling as required by this subchapter; and
- (5) information, upon request, describing how test results and related information are stored by the service provider, how long the information is retained, and under what circumstances the information may be communicated to other persons.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.255. QUALIFIED FACILITY. A laboratory facility that conducts testing of a specimen collected with a home collection kit

for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.256. ORAL REPORTING. A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. Notwithstanding Section 81.109, the test results may be provided by telephone.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.257. COUNSELING; COUNSELING PROTOCOLS. (a) A service provider shall provide pretesting counseling to an individual who is considering using a home collection kit for HIV infection testing. This counseling may be provided orally by telephone or through written information included with the home collection kit.

(b) At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment.

(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the board. Except as provided by Section 85.256, the counseling protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.

(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The board may require a service provider to provide counseling in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

(e) A service provider, in providing counseling, may not:

- (1) solicit the purchase of additional services or products; or
- (2) refer the individual being counseled to an entity:
  - (A) that is owned or controlled by the service provider;
  - (B) that owns or controls the service provider;

(C) that is owned or controlled by an entity that owns or controls the service provider; or

(D) that has another ongoing financial relationship with the service provider.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.258. LABELING. (a) A home collection kit for HIV infection testing shall meet the requirements of Chapter 431.

(b) In addition to the requirements in Subsection (a), the labeling shall explain which persons and entities will have access to the test results for the individual.

(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The board may require a service provider to label a home collection kit in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.259. ENFORCEMENT. A home collection kit for HIV infection testing is a "device" as that term is defined in Section 431.002 and is subject to the provisions for enforcement contained in Chapter 431. Any violation of the requirement in Section 85.258 shall be subject to the enforcement provisions of Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.260. CONFIDENTIALITY. (a) Any statement that an identifiable individual has or has not been tested with a home collection kit for HIV infection testing, including a statement or assertion that the individual is positive, is negative, is at risk, or has or does not have a certain level of antigen or antibody, is confidential as provided by Section 81.103.

(b) A person commits an offense if the person violates this section. The punishment for an offense under this section is the

same as the punishment for an offense under Section 81.103.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.261. CERTAIN TECHNOLOGY PROHIBITED. A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.262. REPORTS. A service provider shall report test results from a home collection kit for HIV infection testing in the manner provided by Subchapter C, Chapter 81.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

#### **SUBCHAPTER K. TEXAS HIV MEDICATION ADVISORY COMMITTEE**

Sec. 85.271. DEFINITIONS. In this subchapter:

- (1) "Commissioner" means the commissioner of the department.
- (2) "Committee" means the Texas HIV Medication Advisory Committee.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "Program" means the Texas HIV medication program established under Subchapter C.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. [2229](#)), Sec. 1, eff. September 1, 2011.

Sec. 85.272. TEXAS HIV MEDICATION ADVISORY COMMITTEE. (a) The executive commissioner shall establish the committee.

(b) The committee consists of 11 members appointed by the executive commissioner. The committee must include:

- (1) three physicians who are actively engaged in the treatment of adults who are infected with HIV;



(2) one physician who is actively engaged in the treatment of infants and children who are infected with HIV;

(3) four consumers who are diagnosed with HIV;

(4) one person who is an administrator for a public, nonprofit hospital that provides services to individuals who are infected with HIV;

(5) one social worker who works with individuals who are infected with HIV; and

(6) one pharmacist who participates in the program.

(c) The department shall provide staff support for the committee.

(d) Except as provided by this subchapter, the committee is subject to Chapter 2110, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.273. DUTIES. (a) The committee shall advise the executive commissioner and the department in the development of procedures and guidelines for the program.

(b) The committee shall:

(1) review the program's goals and aims;

(2) evaluate the program's ongoing efforts;

(3) recommend both short-range and long-range goals and objectives for medication needs; and

(4) perform any other tasks assigned by the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.274. TERMS. A committee member serves at the will of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.275. OFFICERS. (a) The committee shall select a

presiding officer and an assistant presiding officer from the committee members.

(b) An officer shall begin serving on March 1 of each odd-numbered year and serve until February 27 of the following odd-numbered year.

(c) An officer may continue to serve until a replacement is elected for the officer's position.

(d) The presiding officer shall:

- (1) preside at all committee meetings attended by the presiding officer;
- (2) call meetings in accordance with this subchapter;
- (3) appoint subcommittees as necessary; and
- (4) ensure annual reports are made to the commissioner.

(e) The presiding officer may serve as an ex officio member of any subcommittee.

(f) The assistant presiding officer shall:

- (1) perform the duties of the presiding officer if the presiding officer is absent or becomes disabled; and
- (2) complete the unexpired portion of the presiding officer's term if the office of the presiding officer becomes vacant.

(g) The committee may elect a committee member to replace the assistant presiding officer if the office of the assistant presiding officer becomes vacant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. [2229](#)), Sec. 1, eff. September 1, 2011.

Sec. 85.276. MEETINGS. (a) The committee shall meet only as necessary to conduct committee business.

(b) A meeting may be called by agreement between the department staff and:

- (1) the presiding officer; or
- (2) three or more members of the committee.

(c) The department staff shall:

- (1) make meeting arrangements; and
- (2) contact each committee member to determine the member's availability for a meeting date and place.

(d) The committee is not a "governmental body" as defined by Chapter 551, Government Code. However, each committee meeting must

be announced and conducted in accordance with Chapter 551, Government Code, except that the provisions allowing executive sessions do not apply to the committee.

(e) Each member of the committee must be informed of a committee meeting at least five working days before the meeting is to take place.

(f) An agenda for each committee meeting must include an item entitled "public comment" under which any person may address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit for each comment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.277. ATTENDANCE. (a) A member shall attend:

- (1) a scheduled committee meeting; and
- (2) a meeting of a subcommittee to which the member is

assigned.

(b) A member shall notify the presiding officer or the appropriate department staff if the member is unable to attend a scheduled meeting.

(c) The committee shall include the attendance records of each member in the committee's annual report to the commissioner. The report must include a member's attendance at both committee and subcommittee meetings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.278. PROCEDURES. (a) The committee shall use Robert's Rules of Order as the basis of parliamentary decisions except as provided by other law or rule.

(b) An action taken by the committee must be approved by a majority vote of the members present after a quorum is established.

(c) Each member shall have one vote.

(d) A member may not authorize another individual to represent the member by proxy.

(e) The committee shall make decisions in the discharge of the

committee's duties without discrimination based on a person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(f) The department staff shall take minutes of each committee meeting. After the minutes are approved by the committee, the presiding officer shall sign the minutes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.279. SUBCOMMITTEES. (a) The committee may establish subcommittees as necessary to assist the committee in performing the committee's duties.

(b) The presiding officer shall appoint committee members to serve on subcommittees and to act as subcommittee chairs. The presiding officer may appoint a person who is not a committee member to serve on a subcommittee.

(c) A subcommittee shall meet when called by the subcommittee's chair or when directed by the committee.

(d) A subcommittee chair shall make a regular report to the committee at each committee meeting or in an interim written report as needed. The report must include an executive summary or minutes of each subcommittee meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.280. STATEMENT BY MEMBER; MEMBER DUTIES. (a) The executive commissioner, the department, and the committee may not be bound by any statement made or action taken by a committee member unless the member makes the statement or takes the action based on specific instructions from the executive commissioner, the department, or the committee.

(b) The committee and committee members may not participate in any legislative activity in the name of the executive commissioner, the department, or the committee unless the committee or committee member obtains approval through the department's legislative process. Committee members may represent themselves or another entity in the legislative process.

(c) A committee member may not accept or solicit a benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(d) A committee member may not disclose confidential information acquired through the member's service on the committee.

(e) A committee member may not knowingly solicit, accept, or agree to accept a benefit for exercising the member's official powers or duties in favor of another person.

(f) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact and may not vote or otherwise participate in the matter.

(g) In this section, "personal or private interest" means a direct pecuniary interest in a matter but does not include a person's engagement in a profession, trade, or occupation if the person's interest is the same as any other person who is similarly engaged in the profession, trade, or occupation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. [2229](#)), Sec. 1, eff. September 1, 2011.

Sec. 85.281. COMPENSATION; EXPENSES. (a) A committee member may receive reimbursement for expenses incurred for each day the member engages in official committee business if the reimbursement is authorized by the General Appropriations Act or through the budget execution process.

(b) A committee member is not entitled to a salary or stipend unless required by law.

(c) A committee member who is an employee of a state agency, other than the department, is not entitled to reimbursement for expenses from the department.

(d) A person who serves on a subcommittee and who is not a committee member is not entitled to reimbursement for expenses from the department.

(e) Only a consumer who is diagnosed with HIV and serves as a committee member is eligible for reimbursement of actual travel expenses incurred.

(f) A committee member who is eligible for reimbursement of expenses shall submit to the department staff the member's receipts for the expenses and any required forms not later than 14 days after

a committee meeting.

(g) A member shall make a request for reimbursement of expenses on an official state travel voucher prepared by the department staff.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.282. REPORTS. (a) The committee shall file an annual written report with the commissioner not later than March 31 of each year. The report must cover the meetings and activities of the committee for the year preceding the date of the report.

(b) The report must include:

(1) the meeting dates of the committee and any subcommittee;

(2) attendance records for each committee member;

(3) a brief description of any action taken by the committee;

(4) a description of how the committee has accomplished any specific tasks officially given to the committee;

(5) the status of any rules recommended by the committee;

and

(6) the anticipated activities of the committee for the following year.

(c) The committee shall identify the costs for the committee's existence in the report, including the cost of department staff used to support the committee's activities and the source of funds used to support the committee's activities.

(d) The presiding officer and appropriate department staff shall sign the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

## **CHAPTER 86. BREAST CANCER AND LUNG CANCER**

### **SUBCHAPTER B. BREAST CANCER SCREENING**

Sec. 86.013. INFORMATION ON SUPPLEMENTAL BREAST CANCER SCREENING. (a) On completion of a mammogram, a mammography facility certified by the United States Food and Drug Administration or by a certification agency approved by the United States Food and Drug

Administration shall provide to the patient the following notice:

"If your mammogram demonstrates that you have dense breast tissue, which could hide abnormalities, and you have other risk factors for breast cancer that have been identified, you might benefit from supplemental screening tests that may be suggested by your ordering physician.

"Dense breast tissue, in and of itself, is a relatively common condition. Therefore, this information is not provided to cause undue concern, but rather to raise your awareness and to promote discussion with your physician regarding the presence of other risk factors, in addition to dense breast tissue.

"A report of your mammography results will be sent to you and your physician. You should contact your physician if you have any questions or concerns regarding this report."

(b) Notwithstanding any other law, this section does not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

(c) The information required by this section or evidence that a person violated this section is not admissible in a civil, judicial, or administrative proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1154 (H.B. [2102](#)), Sec. 2, eff. September 1, 2011.

## **CHAPTER 87. BIRTH DEFECTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 87.001. DEFINITIONS. In this chapter:

(1) "Birth defect" means a physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

(2) "Communicable disease" has the meaning assigned by Section 81.003.

(3) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995.

(4) "Environmental causes" means the sum total of all the conditions and elements that make up the surroundings and influence the development of an individual.

(5) "Harmful physical agent" has the meaning assigned by Section 503.001.

(6) "Health professional" means an individual whose:

- (A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and
- (B) duties require a specified amount of formal education and may require a special examination, certificate, or license or membership in a regional or national association.

(7) "Health facility" includes:

- (A) a general or special hospital licensed by the department under Chapter 241;
- (B) a physician-owned or physician-operated clinic;
- (C) a publicly or privately funded medical school;
- (D) a state hospital or state school maintained and managed by the Texas Department of Mental Health and Mental Retardation;
- (E) a genetic evaluation and counseling center;
- (F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121;
- (G) a physician peer review organization; and
- (H) another facility specified by board rule.

(8) "Midwife" has the meaning assigned by Section 203.002, Occupations Code.

(9) "Local health unit" has the meaning assigned by Section 121.004.

(10) "Toxic substance" has the meaning assigned by Section 503.001.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.774, eff. Sept. 1, 2001.

Sec. 87.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or



suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information or, if the person is a minor, the minor's parents, managing conservator, guardian, or other person who is legally authorized to consent;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and board rules relating to the identification, monitoring, and referral of children with birth defects;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service; or

(5) to medical personnel to the extent necessary to protect the health or life of the child identified in the information.

(d) A board member, the commissioner, another employee of the department, or an authorized agent may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified or monitored for a birth defect by the department without the consent of the child's parents, managing conservator, guardian, or other person authorized by law of this state or another state or by a court order to give consent.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 8.130, eff. Sept. 1, 1995.

Sec. 87.003. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for supplies, equipment, data, and data collection and other services.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.004. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.005. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the program.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER B. BIRTH DEFECTS MONITORING PROGRAM**

Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED. (a) The board shall establish in the department a program to:

- (1) identify and investigate certain birth defects in children; and
- (2) maintain a central registry of cases of birth defects.

(b) The board may authorize the department to implement a statewide program or to limit the program to a part or all of one or more public health regions, depending on the funding available to the department. In establishing the program, the board shall consider:

- (1) the number and geographic distribution of births in the state;
- (2) the trained personnel and other departmental resources that may be assigned to the program activities; and
- (3) the occurrence or probable occurrence of an urgent situation that requires or will require an unusual commitment of the department's personnel and other resources.

(c) The board and the department shall design the program so that the program will:

- (1) provide information to identify risk factors and causes of birth defects;

(2) provide information on other possible causes of birth defects;

(3) provide for the development of strategies to prevent birth defects;

(4) provide for interview studies about the causes of birth defects;

(5) together with other departmental programs, contribute birth defects data to a central registry;

(6) provide for the appointment of authorized agents to collect birth defects information; and

(7) provide for the active collection of birth defects information.

(d) The board shall adopt rules to govern the operation of the program and carry out the intent of this chapter. At a minimum, the rules shall:

(1) use a medically recognized system to specify the birth defects to be identified and investigated;

(2) select a system for classifying the birth defects according to the public health significance of each defect to prioritize the use of resources;

(3) develop a system to select and specify the cases to be investigated;

(4) specify a system for selecting the demographic areas in which the department may undertake investigations; and

(5) prescribe the training and experience a person must have for appointment as an authorized agent of the department.

(e) In adopting the rules required by Subsection (d), the board shall consider at least:

(1) the known incidence and prevalence rates of a birth defect in the state or portions of the state;

(2) the known incidence and prevalence rates of a particular birth defect in specific population groups who live in the state or portions of the state;

(3) the morbidity and mortality resulting from the birth defect; and

(4) the existence, cost, and availability of a strategy to prevent and treat the birth defect.

(f) In addition to providing for the active collection of birth defects information under Subsection (c)(7), the board and the department may design the program to also provide for the passive

collection of that information.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 1042, Sec. 1, eff. June 20, 2003.

Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate source of data necessary to investigate the incidence, prevalence, and trends of birth defects, the board may require a health facility, health professional, or midwife to make available for review by the department or by an authorized agent medical records or other information that is in the facility's, professional's, or midwife's custody or control and that relates to the occurrence of a birth defect specified by the board.

(b) The board by rule shall prescribe the manner in which records and other information are made available to the department.

(c) The board shall adopt procedural rules to facilitate cooperation between the health care facility, health professional, or midwife and a department employee or authorized agent, including rules for notice, requests for medical records, times for record reviews, and record management during review.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the medical criteria prescribed by board rule, and the child's family, shall be referred to the department's case management program for guidance in applying for financial or medical assistance available through existing state and federal programs.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER C. INVESTIGATIONS AND INSPECTIONS**

Sec. 87.041. INVESTIGATIONS. (a) The department may conduct investigations, including epidemiological or toxicological investigations, of cases of specified birth defects.

(b) The department may conduct these investigations to determine the nature and extent of the disease or the known or

suspected cause of the birth defect and to formulate and evaluate control measures to protect the public health. The department's investigation is not limited to geographic, temporal, or occupational associations and may include investigation of past exposures.

(c) A person shall provide medical, demographic, epidemiological, toxicological, and environmental information to the department under this chapter.

(d) A person is not liable in damages or other relief for providing medical or other confidential information to the department during an epidemiological or toxicological investigation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.042. DEPARTMENTAL INVESTIGATORY POWERS. To conduct an investigation under this chapter, the commissioner or the commissioner's designee has the same authority to enter, inspect, investigate, and take samples and to do so in the same manner as is provided for communicable diseases under Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.132, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. CENTRAL REGISTRY**

Sec. 87.061. REGISTRY; CONFIDENTIALITY. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central registry to facilitate research and to maintain security. The department may also store information available from other departmental programs and information from other reporting systems and health care providers.

(b) The department shall use the registry to:

- (1) investigate the causes of birth defects and other health conditions as authorized by Texas statutes;
- (2) design and evaluate measures to prevent the occurrence of birth defects and other health conditions; and
- (3) conduct other investigations and activities necessary for the board and department to fulfill their obligation to protect the health of the public.

(c) The department may store in the central registry information that is obtained from the section of the birth certificate entitled "For Medical and Health Use Only." This information may be used only as provided by Section 191.002(b), relating to the form and contents of the birth certificate.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.062. ACCESS TO INFORMATION. (a) Access to the central registry information is limited to authorized department employees and other persons with a valid scientific interest who are engaged in demographic, epidemiological, or other studies related to health and who agree in writing to maintain confidentiality.

(b) The department shall maintain a listing of each person who is given access to the information in the central registry. The listing shall include:

- (1) the name of the person authorizing access;
- (2) the name, title, and organizational affiliation of each person given access;
- (3) the dates of access; and
- (4) the specific purpose for which the information was used.

(c) The listing is public information, is open to the public under Chapter 552, Government Code, and may be inspected during the department's normal hours of operation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 87.063. RESEARCH; REVIEW AND APPROVAL. (a) The commissioner and the department's committee for the protection of human subjects shall review each research proposal that requests the use of information in the central registry. The board shall adopt rules establishing criteria to be used in deciding if the research design should be approved. A proposal that meets the approval criteria is considered to establish a valid interest as required by Section 87.062(a), and the commissioner and the committee shall authorize the researcher to review the records relevant to the

research proposal and to contact cases and controls.

(b) If an investigator using central registry data under a research design approved under this section believes it is necessary to contact case subjects and controls, the investigator must submit a protocol describing the purpose and method to the commissioner and the department's committee for the protection of human subjects. If the contact protocol is approved, the investigator is considered to have established a bona fide research, development, or planning purpose and is entitled to carry out the contacts without securing additional approvals or waivers from any entity.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.133, eff. Sept. 1, 1995.

Sec. 87.064. REPORT OF CENTRAL REGISTRY ACTIVITIES AND FINDINGS. (a) The department shall publish an annual report of activities using data contained in the central registry. The report shall include:

(1) a description of research projects in progress since the last report and the sponsors and principal investigators directing each project;

(2) results of the completed research projects either as an abstract or a complete scientific paper that has been reviewed and approved by an appropriate jury;

(3) a summary of the statistical information compiled in the registry, including a specific discussion of any clusters, high or low incidences, or prevalences or trends encountered;

(4) any policy, research, educational, or other recommendations the department considers appropriate; and

(5) such other information the editors of the report find is appropriate.

(b) The department may publish periodic reports in addition to the annual report.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.065. COORDINATION WITH MEXICO. In developing the central registry and conducting research in areas of this state that

border Mexico, the department shall make every effort to coordinate its efforts with similar efforts and research programs in Mexico.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

#### **CHAPTER 88. REPORTS OF CHILDHOOD LEAD POISONING**

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Child care" includes a school, preschool, kindergarten, nursery school, or other similar activity that provides care or instruction for young children.

(2) "Child care facility" means a public place or a residence in which a person furnishes child care.

(3) "Health authority" means a physician appointed as such under Chapter 121.

(4) "Health professional" means an individual whose:

- (A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and
- (B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(5) "Lead" includes metallic lead and materials containing metallic lead with a potential for release in sufficient concentrations to pose a threat to public health.

(6) "Blood lead levels of concern" means the presence of blood lead concentrations suspected to be associated with mental and physical disorders due to absorption, ingestion, or inhalation of lead as specified in the most recent criteria issued by the United States Department of Health and Human Services, United States Public Health Service, Centers for Disease Control and Prevention of the United States Public Health Service.

(7) "Lead poisoning" means the presence of a confirmed venous blood level established by board rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the United States Department of Health and Human Services, United States Public Health Service, Centers for Disease Control and Prevention of the United States Public Health Service.

(8) "Local health department" means a department created under Chapter 121.



(9) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(10) "Public health district" means a district created under Chapter 121.

(11) "Regional director" means a physician appointed by the board as the chief administrative officer of a public health region under Chapter 121.

(12) "Board" means the Texas Board of Health.

(13) "Child-occupied facility" means a building or part of a building, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(14) "Lead hazard" means an item, surface coating, or environmental media that contains or is contaminated with lead and, when ingested or inhaled, may cause exposures that contribute to blood lead levels in children, including:

(A) an accessible painted surface or coating;

(B) an article for residential or consumer use;

(C) accessible soil and dust, including attic dust; and

(D) food, water, or remedies.

(15) "Certified lead risk assessor" means a person who has been certified by the department to conduct lead risk assessments, inspections, and lead-hazard screens, as defined by department rule.

(16) "Environmental lead investigation" means an investigation performed by a certified lead risk assessor of the home environment of, or other premises frequented by, a child who has a confirmed blood lead level warranting such an investigation, under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Amended by Acts 2003, 78th Leg., ch. 740, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 1, eff. September 1, 2007.

Sec. 88.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with blood lead levels of concern or lead poisoning are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of childhood lead poisoning and children with blood lead levels of concern are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) Medical, epidemiologic, or toxicologic information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

(d) The commissioner, a regional director or other department employee, a health authority or employee of a public health district, a health authority or employee of a county or municipal health department, or a public official of a county or municipality may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified, examined, or treated for lead poisoning or about a child possessing blood lead levels of concern by the department, a public health district, a local health department, or a health authority without the consent of the child's parents, managing conservator, guardian, or other person authorized by law to

give consent.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The board may implement policies and procedures to promote the elimination of childhood lead poisoning within the state. The board may adopt measures to:

(1) significantly reduce the incidence of childhood lead poisoning throughout the state;

(2) improve public awareness of lead safety issues and educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; and

(3) encourage the testing of children likely to suffer the consequences of lead poisoning so that prompt diagnosis and treatment and the prevention of harm are possible.

Added by Acts 2003, 78th Leg., ch. 740, Sec. 4, eff. Sept. 1, 2003.

Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood blood lead levels of concern are reportable.

(b) The board by rule may designate:

(1) blood lead concentrations in children that must be reported; and

(2) the ages of children for whom the reporting requirements apply.

(c) The board may adopt rules that establish a registry of children with blood lead levels of concern and lead poisoning.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person required to report childhood blood lead levels of concern shall report to the department in the manner specified by board rule. Except as provided by this section, a person required by this section to report must make the report immediately after the person gains knowledge of the case or suspected case of a child with a blood lead level of concern.

(b) A physician shall report a case or suspected case of childhood lead poisoning or of a child with a blood lead level of concern after the physician's first examination of a child for whom reporting is required by board rule.

(c) A person in charge of an independent clinical laboratory, a hospital or clinic laboratory, or other facility in which a laboratory examination of a specimen derived from the human body yields evidence of a child with a blood lead level of concern shall report the findings to the department as required by board rule.

(d) If a report is not made as required by Subsection (b) or (c), the following persons shall report a case or suspected case of a child with lead poisoning or a blood lead level of concern and all information known concerning the child:

(1) the administrator of a hospital licensed under Chapter 241;

(2) a professional registered nurse;

(3) an administrator or director of a public or private child care facility;

(4) an administrator of a home health agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) a superintendent, manager, or health official of a public or private camp, home, or institution;

(7) a parent, managing conservator, or guardian; and

(8) a health professional.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Sec. 88.005. REPORTING PROCEDURES. (a) The board shall prescribe the form and method of reporting under this chapter, including a report in writing, by telephone, or by electronic data transmission.

(b) Board rules may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the child's name, address, age, sex, and race;

(2) the child's blood lead concentration;

(3) the procedure used to determine the child's blood lead concentration; and

(4) the name of the attending physician.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the customary reporting procedure would cause the information to be unduly delayed.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Sec. 88.006. REPORTS OF HOSPITALIZATION; DEATH. (a) A physician who attends a child during the child's hospitalization shall immediately notify the department if the physician knows or suspects that the child has lead poisoning or a blood lead level of concern and the physician believes the lead poisoning or blood lead level of concern resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(b) A physician who attends a child during the child's last illness shall immediately notify the department if the physician:

(1) knows or suspects that the child died of lead poisoning; and

(2) believes the lead poisoning resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(c) An attending physician, health authority, or regional director, with the consent of the child's survivors, may request an autopsy if the physician, health authority, or regional director needs further information concerning the cause of death in order to protect the public health. The health authority or regional director may order the autopsy to determine the cause of death if the child's survivors do not consent to the autopsy. The autopsy results shall be reported to the department.

(d) A justice of the peace acting as coroner or a medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a child's cause of death was lead poisoning that resulted from exposure to a dangerous level of lead that the justice of the peace or medical examiner believes may be a threat to the public health shall immediately notify the health authority or the regional director in the jurisdiction in which the finding is made.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.

Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE; COORDINATION OF CARE. (a) The department may adopt rules establishing standards for follow-up care provided to children with a confirmed blood lead level of concern.

(b) Rules adopted under this section must meet any federal requirements for coordinated follow-up care for children with confirmed blood lead levels of concern and may include, in a manner consistent with current federal guidelines:

(1) an environmental lead investigation of all or parts of a child's home environment, child-care facility, or child-occupied facility that may be a source of a lead hazard causing or contributing to the child's lead exposure; and

(2) guidance to parents, guardians, and consulting physicians on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. [814](#)), Sec. 2, eff. September 1, 2007.

Sec. 88.008. ENVIRONMENTAL LEAD INVESTIGATIONS. (a) On receiving a report of a child with a confirmed blood lead level warranting an environmental lead investigation, the department or its authorized agent may conduct an environmental lead investigation of:

(1) the home environment in which the child resides, if the department or the department's authorized agent obtains the written consent of an adult occupant;

(2) any child-care facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of the owner, operator, or principal of the facility; and

(3) any child-occupied facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of:

(A) the owner, operator, or principal of the facility;

or

(B) an adult occupant of the facility if the facility is subject to a lease agreement.

(b) Notwithstanding the consent requirements under Subsection (a), consent for an investigation is not required to be in writing for an investigation related to a report of a child with a blood lead level of 45 micrograms per deciliter or more if a good faith attempt to contact the persons authorized to provide written consent under Subsection (a) has been unsuccessful.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.

Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES. The department may adopt rules establishing procedures for environmental lead investigations of dwellings and other premises subject to this chapter. The rules must meet, but may not exceed, any requirements established under regulations adopted by the federal Environmental Protection Agency under Subchapter IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.).

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.

**CHAPTER 89. SCREENING AND TREATMENT FOR TUBERCULOSIS IN JAILS AND  
OTHER CORRECTIONAL FACILITIES  
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Community corrections facility" means a facility established under Chapter 509, Government Code.

(2) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense and includes:

(A) a facility operated by or for a county for the confinement of persons accused or convicted of an offense;

(B) a county jail or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code; and

(C) a county correctional center authorized by Subchapter H, Chapter 351, Local Government Code.

(3) "Governing body" means:

(A) the commissioners court of a county, for a county jail;

(B) the district judges governing a community corrections facility, for a community corrections facility;

(C) the governing body of a municipality, for a jail operated by or under contract to a municipality; or

(D) the community supervision and corrections department, for a jail operated under contract to a community supervision and corrections department.

(4) "Health authority" has the meaning assigned by Section 121.021.

(5) "Jail" means:

(A) a county jail; or

(B) a facility for the confinement of persons accused of an offense that is:

(i) operated by a municipality or a vendor under contract with a municipality under Subchapter E, Chapter 351, Local Government Code; or

(ii) operated by a vendor under contract with a community supervision and corrections department under Chapter 76, Government Code.

(6) "Local health department" means a health department created under Subchapter D, Chapter 121.

(7) "Physician" means a person licensed to practice medicine in a state of the United States.

(8) "Public health district" means a health district established under Subchapter E, Chapter 121.

(9) "Screening test" means a rapid analytical laboratory or other procedure to determine the need for further diagnostic evaluation.

(10) "Tuberculosis" means a disease caused by Mycobacterium tuberculosis or other members of the Mycobacterium tuberculosis complex.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 7.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 348, Sec. 1, eff. Sept. 1, 1997.

Sec. 89.002. SCOPE OF CHAPTER. Except as provided by



Subchapter E, this chapter applies only to a jail that:

- (1) has a capacity of at least 100 beds; or
- (2) houses inmates:
  - (A) transferred from a county that has a jail that has a capacity of at least 100 beds; or
  - (B) from another state.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 2, eff. Sept. 1, 1997.

#### **SUBCHAPTER B. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS**

Sec. 89.011. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS. (a)

The governing body of a jail or community corrections facility, through the community supervision and corrections department, shall require that each employee or volunteer working or providing services in a jail or a community corrections facility, who meets the screening guidelines prescribed by board rule, present to the governing body a certificate signed by a physician that states that:

- (1) the employee or volunteer has been tested for tuberculosis infection in accordance with board rules; and
- (2) the results of the test indicate that the person does not have tuberculosis.

(b) In lieu of a screening test, an employee or volunteer with a history of a positive screening test may provide:

- (1) documentation of that positive test result and of any diagnostic and therapeutic follow-up; and
- (2) a certificate signed by a physician that states that the person does not have tuberculosis.

(c) The health authority may require an employee or volunteer to have an additional screening test or medical examination if the department determines that an additional test or examination is necessary and appropriate to protect the public health.

(d) An employee or volunteer is exempt from the screening test required by this section if:

- (1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or
- (2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 3, eff. Sept. 1, 1997.

Sec. 89.012. FOLLOW-UP EVALUATIONS AND TREATMENT. (a) An employee or a volunteer with a positive screening test result must obtain a diagnostic evaluation from the person's own physician to determine if the person has tuberculosis.

(b) If the employee or volunteer has tuberculosis, the governing body may not permit the person to begin or continue the person's employment duties or volunteer services unless the person is under treatment for the disease by a physician and the person provides to the governing body a certificate signed by the attending physician stating that the patient is noninfectious.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 4, eff. Sept. 1, 1997.

Sec. 89.013. CERTIFICATE REQUIRED. (a) The governing body or a designee of the governing body shall confirm that each employee or volunteer required to be screened under this subchapter has the required certificate.

(b) The governing body may not permit an employee or volunteer to carry out the person's duties if the person does not have the required certificate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

Sec. 89.014. COST OF TESTS, FOLLOW-UP, AND TREATMENT. The employee or volunteer shall pay the expense of a screening test, diagnostic evaluation, or other professional medical service required under this subchapter unless the commissioners court, the governing body of a municipality, or a local health department or public health district elects to provide the service.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

#### **SUBCHAPTER C. INMATE SCREENING AND TREATMENT**

Sec. 89.051. INMATE SCREENING REQUIRED. (a) Each inmate in a jail or community corrections facility shall undergo a screening test for tuberculosis infection approved by the board if:

- (1) the inmate will probably be confined in jail or a community corrections facility for more than seven days; and
- (2) the inmate meets the screening guidelines prescribed by board rules.

(b) The inmate must be tested on or before the seventh day after the day the inmate is first confined.

(c) An inmate listed by Subsection (a) is not required to be retested at each rebooking if the inmate is booked into a jail or a community corrections facility more than once during a 12-month period unless the inmate shows symptoms of tuberculosis or is known to have been exposed to tuberculosis.

(d) An inmate is exempt from the screening test required by this section if:

- (1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or
- (2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 6, eff. Sept. 1, 1997.

Sec. 89.052. RESCREENING; DIAGNOSTIC EVALUATIONS. The department or a health authority may require a governing body to provide an additional screening test or a diagnostic evaluation if the department or health authority determines that an additional screening test or a diagnostic evaluation is necessary and appropriate to protect the health of the jail inmates, employees, volunteers, or the public.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 7, eff. Sept. 1, 1997.

Sec. 89.053. FOLLOW-UP EVALUATIONS. (a) If an inmate has a confirmed positive screening test result, the governing body shall provide a diagnostic evaluation to determine whether the inmate has tuberculosis.

(b) The sheriff, jail administrator, or director of the community corrections facility shall provide appropriate accommodations to an inmate who has tuberculosis or is suspected of having tuberculosis, including respiratory isolation, if necessary, and adequate medical care and treatment that meet the accepted standards of medical practice.

(c) The jail or community corrections facility shall provide preventive therapy to an infected inmate if the preventive therapy is prescribed by the attending physician and the inmate consents to the treatment.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 8, eff. Sept. 1, 1997.

Sec. 89.054. INMATE TRANSFER AND RELEASE. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement must accompany an inmate transferred from one jail or community corrections facility to another or the Texas Department of Criminal Justice and be available for medical review on arrival of the inmate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER D. REPORTING; RULEMAKING; MINIMUM STANDARDS**

Sec. 89.071. REPORTING. (a) A case of tuberculosis shall be reported to the appropriate health authority or to the department not later than the third day after the day on which the diagnosis is suspected.

(b) The results of a screening test shall be reported to the department monthly in a manner approved by the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Sec. 89.072. RULEMAKING. The department shall recommend to the Commission on Jail Standards and the Texas Department of Criminal Justice rules to carry out this chapter, including rules describing:

(1) the types of screening tests and diagnostic evaluations and the scope of the professional examinations that may be used to

meet the requirements of this chapter;

(2) the categories of employees, volunteers, or inmates who must have a screening test under this chapter;

(3) the form and content of the certificate required under Subchapter B for employees and volunteers;

(4) the deadlines for filing a certificate;

(5) the transfer of employee or volunteer certificates and inmate records between facilities;

(6) the frequency of screening tests for employees, volunteers, and inmates;

(7) the criteria for requiring an additional screening test or a diagnostic evaluation or examination; and

(8) the reporting of a screening test or an evaluation or examination result to the appropriate health authority or to the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 9, eff. Sept. 1, 1997.

Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The standards prescribed by this chapter and the rules adopted by the board relating to screening tests or examinations for tuberculosis required for certain employees and volunteers are minimum standards.

(b) With the prior approval of the department:

(1) a governing body may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and the board's rules; and

(2) a private facility may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and the board's rules.

(c) The board shall adopt substantive and procedural rules to govern the submission of standards adopted under Subsection (b). At a minimum these rules must contain:

(1) a procedure for the submission of standards for departmental review; and

(2) an internal departmental appeal process by which a governing body or private entity may seek a review of the

department's decision to reject proposed standards.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 10, eff. Sept. 1, 1997.

#### **SUBCHAPTER E. CONTINUITY OF CARE**

Sec. 89.101. DEFINITIONS. In this subchapter:

(1) "Corrections facility" means:

(A) a jail or community corrections facility, without regard to whether the jail or facility satisfies the requirements of Section 89.002;

(B) any correctional facility operated by or under contract with a division of the Texas Department of Criminal Justice; or

(C) a detention facility operated by the Texas Youth Commission.

(2) "Offender" means a juvenile or adult who is arrested or charged with a criminal offense.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.

Sec. 89.102. REPORT OF RELEASE. A corrections facility shall report to the department the release of an offender who is receiving treatment for tuberculosis. The department shall arrange for continuity of care for the offender.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.

### **CHAPTER 92. INJURY PREVENTION AND CONTROL**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Injury" means damage to the body that results from intentional or unintentional acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of essentials such as heat or oxygen.

(2) "Reportable injury" means an injury or condition required to be reported under this subchapter.

(3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.001 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 2003.

Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the department. The board by rule shall define those terms for reporting purposes.

(b) The board may adopt rules that require other injuries to be reported under this subchapter.

(c) The board shall maintain and revise, as necessary, the list of reportable injuries.

(d) The board shall adopt rules necessary to administer this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.002 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 2003.

Sec. 92.003. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable injuries to the department:

(1) a physician who diagnoses or treats a reportable injury; and

(2) a medical examiner or justice of the peace.

(b) The department may contact a physician attending a person

with a case or suspected case of a reportable injury.

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information, including the person's name, address, age, sex, race, occupation, employer, and attending physician, necessary to achieve the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.003 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 5, eff. Sept. 1, 2003.

Sec. 92.004. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to carry out this subchapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of identifying, reporting, or preventing those injuries that have been determined by the board to be harmful or to be a threat to the public health.

(c) Subject to the confidentiality provisions of this subchapter, the department shall evaluate the reports of injuries to establish the nature and magnitude of the hazards associated with those injuries, to reduce the occurrence of those risks, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this subchapter and other law.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.004 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 6, eff. Sept. 1, 2003.



Sec. 92.005. ACCESS TO INFORMATION. Subject to the confidentiality provisions of this subchapter, the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.005 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 7, eff. Sept. 1, 2003.

Sec. 92.006. CONFIDENTIALITY. (a) All information and records relating to injuries are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this subchapter are kept confidential and protected from release to unauthorized persons.

(c) The director, the director's designee, or an employee of the department may not be examined in a judicial or other proceeding about the existence or contents of pertinent records of, investigation reports of, or reports or information about a person examined or treated for an injury without that person's consent.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.006 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 8, eff. Sept. 1, 2003.

Sec. 92.007. INVESTIGATIONS. (a) The department shall investigate the causes of injuries and methods of prevention.

(b) The director or the director's designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the director's duty to prevent an injury.

(c) The director or the director's designee may not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.007 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997.

Sec. 92.008. TECHNICAL ADVISORY COMMITTEE ON INJURY REPORTING.

(a) The board shall appoint a technical advisory committee to advise the board of injuries other than spinal cord injuries, traumatic brain injuries, and submersion injuries that should be required by rule to be reported under this subchapter.

(b) The technical advisory committee is composed of:

(1) three doctors of medicine or doctors of osteopathic medicine licensed to practice in this state; and

(2) three hospital representatives, one of whom must be a public hospital representative.

(c) A technical advisory committee member serves at the pleasure of the board.

(d) A vacancy on the technical advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(e) A member of the technical advisory committee is not entitled to reimbursement for expenses incurred in performing duties under this subchapter.

(f) The technical advisory committee may elect a chairman, vice-chairman, and secretary from among its members and may adopt

rules to conduct its activities.

(g) The technical advisory committee is entitled to review and comment on the board's rules under Section 92.002(b) before the rules are proposed.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.008 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 9, eff. Sept. 1, 2003.

Sec. 92.009. COORDINATION WITH TEXAS DEPARTMENT OF INSURANCE.

The department and the Texas Department of Insurance shall enter into a memorandum of understanding which shall include the following:

(1) the department and the Texas Department of Insurance shall exchange relevant injury data on an ongoing basis notwithstanding Section 92.006;

(2) confidentiality of injury data provided to the department by the Texas Department of Insurance is governed by Subtitle A, Title 5, Labor Code;

(3) confidentiality of injury data provided to the Texas Department of Insurance by the department is governed by Section 92.006; and

(4) cooperation in conducting investigations of work-related injuries.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.009 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.009 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.101, eff. September 1, 2005.

Sec. 92.010. COORDINATION WITH TEXAS REHABILITATION COMMISSION.

The department and the Texas Rehabilitation Commission shall enter into a memorandum of understanding to:

- (1) exchange relevant injury data on an ongoing basis notwithstanding Section 92.006;
- (2) maintain the confidentiality of injury data provided to the department by the commission in accordance with Section 92.006 and Section 111.057, Human Resources Code; and
- (3) cooperate in conducting investigations of spinal cord and traumatic brain injuries.

Added by Acts 1997, 75th Leg., ch. 893, Sec. 6, eff. Sept. 1, 1997. Renumbered from Sec. 88.010 and amended by Acts 1999, 76th Leg., ch. 62, Sec. 11.01, eff. Sept. 1, 1999.

Sec. 92.011. COORDINATION WITH TEXAS TRAUMATIC BRAIN INJURY ADVISORY COUNCIL. (a) The department and the Texas Traumatic Brain Injury Advisory Council established within the department under Subchapter B shall:

- (1) exchange relevant injury data on an ongoing basis to the extent allowed by Section 92.006;
- (2) maintain the confidentiality of injury data provided to the council by the department in accordance with Section 92.006;
- (3) permit the council to review and comment on the board's rules under Section 92.002(b) before the rules are proposed; and
- (4) cooperate in conducting investigations of traumatic brain injuries.

(b) The department and the Texas Traumatic Brain Injury Advisory Council may enter into a memorandum of understanding to facilitate cooperation under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 893, Sec. 6, eff. Sept. 1, 1997. Renumbered from Sec. 88.011 and amended by Acts 1999, 76th Leg., ch. 62, Sec. 11.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1088, Sec. 10, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. TEXAS TRAUMATIC BRAIN INJURY ADVISORY COUNCIL**

Sec. 92.051. DEFINITIONS. In this subchapter:

- (1) "Traumatic brain injury support group" means a local, state, or national organization that:

(A) is established to provide support services to aid persons with a traumatic brain injury and their primary family caregivers;

(B) encourages research into the cause, prevention, and treatment of traumatic brain injury and care of persons with a traumatic brain injury; and

(C) is dedicated to the development of essential services for persons with a traumatic brain injury and their primary family caregivers.

(2) "Council" means the Texas Traumatic Brain Injury Advisory Council.

(3) "Primary family caregiver" means an individual who is a relative of a person with a traumatic brain injury who has or has had a major responsibility for the care and supervision of the person with a traumatic brain injury and who is not a professional health care provider paid to care for the person with a traumatic brain injury.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.052. ADVISORY COUNCIL; ASSOCIATED AGENCY. (a) The Texas Traumatic Brain Injury Advisory Council is an advisory council within the department.

(b) Notwithstanding Subsection (a), if, as a result of legislation enacted in the 78th Legislature, Regular Session, 2003, a state agency other than the department is designated to serve as the agency with primary responsibility in relation to persons with physical disabilities, the council is an advisory council within that state agency and a reference in this chapter to the department means that agency.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.053. MEMBERSHIP. (a) The council must be composed in accordance with federal law. Appointments to the council shall be made without regard to:

(1) the race, color, sex, religion, age, or national origin of the appointees; or

(2) the disability of the appointees, except as required by

federal law.

(b) The council is composed of 22 members appointed as follows:

(1) eight public consumer members appointed by the commissioner of health and human services, at least three of whom must be individuals related to persons with a traumatic brain injury and at least three of whom must be persons with a brain injury;

(2) six professional members appointed by the commissioner of health and human services, each of whom must have special training and interest in the care, treatment, or rehabilitation of persons with a traumatic brain injury, with one representative each from:

(A) acute hospital trauma units;

(B) the National Institute for Disability Rehabilitation Research Traumatic Brain Injury Model System in this state;

(C) acute or post-acute rehabilitation facilities;

(D) community-based services;

(E) faculties of institutions of higher education; and

(F) providers in the areas of physical therapy, occupational therapy, or cognitive rehabilitation; and

(3) eight state agency members, with one representative from each of the following agencies appointed by the chief executive officer of the agency:

(A) Texas Department of Health;

(B) Texas Department of Human Services;

(C) Texas Department of Mental Health and Mental Retardation;

(D) Texas Rehabilitation Commission;

(E) Health and Human Services Commission;

(F) Texas Education Agency;

(G) Texas Planning Council for Developmental Disabilities; and

(H) Texas Department of Insurance.

(c) One of the six public consumer members appointed under Subsection (b)(1) must be a member of a statewide traumatic brain injury support group.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.054. OFFICERS. (a) The members of the council

annually shall elect a presiding officer and an assistant presiding officer from the council members.

(b) A representative of a state agency may not serve as presiding officer or assistant presiding officer.

(c) At least one of the officers must be a public consumer member.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.055. RESTRICTIONS ON MEMBERS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The term does not include a voluntary health organization.

(b) A person may not be a public consumer member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money from the council;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money from the council; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(c) A person may not be a member of the council if the person is an officer, employee, or paid consultant of a Texas trade association in a health care field.

(d) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

(e) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by Section 92.053(b);

(2) does not maintain during service on the council the

qualifications required by Section 92.053(b);

(3) is ineligible for membership under Subsection (b), (c), or (d);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(f) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.056. TERMS; VACANCY. (a) The public consumer and professional members of the council are appointed for staggered six-year terms, with the terms of four or five members expiring February 1 of each odd-numbered year.

(b) In addition to other methods by which a position may become vacant, a position on the council becomes vacant if a member resigns from the council by providing written notice to the presiding officer of the council.

(c) If a position on the council becomes vacant, the presiding officer shall provide written notice to the appropriate appointing official requesting a new appointment to fill the remainder of the member's term.

(d) If a vacancy occurs, the appropriate appointing official shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(e) A person who has served one full term on the council is not eligible for reappointment.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.057. COMPENSATION; EXPENSES. (a) Except as provided by Subsections (b) and (c), a member of the council is not entitled to compensation for service on the council and is not entitled to reimbursement for travel expenses.



(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting council business from the funds of the agency the person represents in accordance with the General Appropriations Act.

(c) If money is available for this purpose in the account established under Section 92.062(b), the department shall reimburse a public consumer member for the member's actual and necessary expenses incurred in performing council duties, including travel, meals, lodging, respite care for a dependent with a disability, and telephone long-distance charges.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.058. MEETINGS. The council shall meet at least once each calendar quarter on meeting dates set by the council and at the call of the presiding officer.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.059. DUTIES OF THE COUNCIL. The council shall:

(1) inform state leaders of issues and policies as they relate to meeting the needs of persons with a traumatic brain injury and their primary family caregivers;

(2) recommend to state leaders policies and programs that more effectively serve persons with a traumatic brain injury and their families;

(3) recommend to the department methods to explore and promote innovative approaches to providing services and support to persons with a traumatic brain injury and their families;

(4) recommend to the department methods to promote education, training, and information about traumatic brain injury issues;

(5) advocate for persons with a traumatic brain injury and their families;

(6) recommend to the department methods to support activities aimed at reducing preventable brain injuries; and

(7) recommend to the department methods to conduct outreach to obtain public input.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.060. DUTIES OF THE DEPARTMENT. (a) The department shall:

- (1) provide administrative support services to the council;
- (2) accept gifts and grants on behalf of the council from any public or private entity;
- (3) receive, deposit, and disburse gifts and grants for the council in accordance with this subchapter and provide other administrative services in support of the council as requested by and negotiated with the council; and
- (4) enter into a memorandum of understanding with the council that delineates the responsibilities of the department and the council under this subchapter and amend the memorandum as necessary to reflect changes in those responsibilities.

(b) The board may adopt rules as necessary to implement the department's duties under this subchapter and federal developmental disability laws.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.061. ADDITIONAL COUNCIL DUTIES. The council shall:

- (1) make recommendations, at the request of the governor or legislative leaders, relating to activities appropriate to the achievement of legislative and executive functions relating to persons with a traumatic brain injury; and
- (2) submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.062. GIFTS AND GRANTS. (a) The council is encouraged to seek a gift or grant from any public or private entity.

(b) The health and human services commission shall deposit any money received under Subsection (a) to the credit of the Texas Traumatic Brain Injury Advisory Council account. The Texas Traumatic Brain Injury Advisory Council account is an account in the general

revenue fund that may be appropriated only for the purpose of carrying out this subchapter.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

Sec. 92.063. ADVISORY COMMITTEE STATUTE INAPPLICABLE. Chapter 2110, Government Code, does not apply to the council.

Added by Acts 2003, 78th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 2003.

**CHAPTER 93. PREVENTION OF CARDIOVASCULAR DISEASE AND STROKE**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Cardiovascular disease" means the group of diseases that target the heart and blood vessels and that are the result of complex interactions between multiple inherited traits and environmental factors.

(2) "Council" means the Council on Cardiovascular Disease and Stroke.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.002. APPOINTMENT OF COUNCIL; TERMS OF MEMBERS. (a) The Council on Cardiovascular Disease and Stroke is composed of:

(1) 11 public members appointed by the governor, with the advice and consent of the senate, as follows:

(A) a licensed physician with a specialization in cardiology;

(B) a licensed physician with a specialization in neurology to treat stroke;

(C) a licensed physician employed in a primary care setting;

(D) a registered nurse with a specialization in quality improvement practices for cardiovascular disease and stroke;

(E) a registered and licensed dietitian;

(F) two persons with experience and training in public health policy, research, or practice;

(G) two consumer members, with special consideration given to persons actively participating in the Texas affiliates of the American Heart Association or American Stroke Association, managed care, or hospital or rehabilitation settings; and

(H) two members from the general public that have or care for persons with cardiovascular disease or stroke; and

(2) one nonvoting member representing each of the state agencies that oversee:

(A) health services;

(B) assistive and rehabilitative services; and

(C) aging and disability services.

(b) In appointing public members under Subsection (a)(1), the governor shall attempt to appoint female members and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

(c) The head of each agency overseeing services listed in Subsection (a)(2) shall appoint the agency's representative nonvoting member.

(d) Public members of the council serve staggered six-year terms, with the terms of three or four of the public members expiring February 1 of each odd-numbered year. A nonvoting member representing a state agency serves at the will of the appointing agency.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 6.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 5, eff. June 17, 2011.

Sec. 93.003. REIMBURSEMENT. (a) Except as provided by Subsection (b), a member of the council may be reimbursed for travel expenses incurred while conducting the business of the council at the same rate provided for state employees in the General Appropriations Act, provided funds are appropriated to the department for this purpose.

(b) If funds are not appropriated to support reimbursement of travel expenses, the commissioner may authorize reimbursement of the travel expenses incurred by a member while conducting the business of the council, as provided in the General Appropriations Act, if the commissioner finds on application of the member that travel for council business imposes a financial hardship on the member.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. [2344](#)), Sec. 2, eff. September 1, 2005.

Sec. 93.004. DUTIES OF DEPARTMENT; FUNDS. The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.005. CONSULTANTS; ADVISORY COMMITTEE. To advise and assist the council with respect to the council's duties under this chapter, the council may appoint one or more:

- (1) consultants to the council; or
- (2) advisory committees under Chapter 2110, Government

Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.007. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible to serve as a public member if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;
- (2) owns or controls directly or indirectly more than a 10

percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel of the council.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. [2344](#)), Sec. 5, eff. September 1, 2005.

Sec. 93.008. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 93.007(a);

(2) is not eligible to serve on the council as provided by Section 93.007(a);

(3) violates a prohibition established by Section 93.007(b) or (c);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly

scheduled council meetings that the member is eligible to attend during each calendar year, unless the absence is excused by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a member of the council exists.

(c) If the presiding officer of the council knows that a potential ground for removal exists, the presiding officer shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) the responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.009. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.010. STAFF SUPPORT. Each agency represented on the council:

(1) shall provide the council with staff support of specialists as needed; and

(2) may provide staff support to an advisory committee.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.011. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policy-making responsibilities of the

council and the management responsibilities of the commissioner and staff of the department.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.012. MEETINGS. (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) An action taken by the council must be approved by a majority of the voting members present.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.013. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of a special account in the general revenue fund as required by Section 93.014.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.014. HEART DISEASE AND STROKE RESOURCE FUND. (a) The heart disease and stroke resource fund is an account of the general revenue fund.

(b) The legislature may appropriate money deposited to the credit of the heart disease and stroke resource fund only to the council for:

(1) heart disease and stroke prevention, research, and medical care for heart attack and stroke victims; and

(2) grants to nonprofit heart disease and stroke organizations.

(c) The council shall develop a policy governing the award of



funds for clinical research that follows scientific peer review guidelines for primary and secondary prevention of heart disease or stroke or that follows other review procedures that are designed to distribute those funds on the basis of scientific merit.

(d) Interest earned from the investment of the heart disease and stroke resource fund shall be deposited to the credit of the fund.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

#### **SUBCHAPTER B. POWERS AND DUTIES OF COUNCIL**

Sec. 93.051. CARDIOVASCULAR DISEASE AND STROKE PREVENTION PLAN; DUTIES OF COUNCIL. (a) The council shall develop an effective and resource-efficient plan to reduce the morbidity, mortality, and economic burden of cardiovascular disease and stroke in this state. The council shall:

(1) conduct health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke;

(2) promote, enhance, and coordinate health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke and that are provided by private and other public organizations;

(3) coordinate activities with other entities that are concerned with medical conditions that are similar to cardiovascular disease and stroke or that have similar risk factors;

(4) identify to health care providers, employers, schools, community health centers, and other groups the benefits of encouraging treatment, primary and secondary prevention, and public awareness of cardiovascular disease and stroke and recognize innovative and effective programs that achieve the objectives of improved treatment, prevention, and public awareness;

(5) provide guidance regarding the roles and responsibilities of government agencies, health care providers, employers, third-party payers, patients, and families of patients in the treatment, primary and secondary prevention, and public awareness of cardiovascular disease and stroke;

(6) improve access to treatment for and primary and

secondary prevention of cardiovascular disease and stroke through public awareness programs, including access for uninsured individuals and individuals living in rural or underserved areas;

(7) assist communities to develop comprehensive local cardiovascular disease and stroke prevention programs;

(8) assist the Texas Education Agency and local school districts to promote a public school curriculum that includes physical, nutritional, and health education relating to cardiovascular disease and stroke prevention;

(9) establish appropriate forums, programs, or initiatives designed to educate the public regarding the impact of heart disease and stroke on women's health, with an emphasis on preventive health and healthy lifestyles; and

(10) evaluate and enhance the implementation and effectiveness of the program developed under this chapter.

(b) The council shall make written recommendations for performing its duties under this chapter to the department and the legislature.

(c) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with cardiovascular disease or stroke. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with cardiovascular disease and stroke.

(d) The council shall collaborate with the Governor's EMS and Trauma Advisory Council, the American Stroke Association, and other stroke experts to make recommendations to the department for rules on the recognition and rapid transportation of stroke patients to health care facilities capable of treating strokes 24 hours a day and recording stroke patient outcomes.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. [2344](#)), Sec. 6, eff. September 1, 2005.

Sec. 93.052. DATABASE OF CLINICAL RESOURCES. The council shall review available clinical resources and shall develop a database of

recommendations for appropriate care and treatment of patients with cardiovascular disease or who have suffered from or are at risk for stroke. The council shall make the database accessible to the public.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.053. CARDIOVASCULAR DISEASE AND STROKE DATABASE. (a) The council shall collect and analyze information related to cardiovascular disease and stroke at the state and regional level and, to the extent feasible, at the local level. The council shall obtain the information from federal and state agencies and from private and public organizations. The council shall maintain a database of this information.

(b) The database may include:

- (1) information related to behavioral risk factors identified for cardiovascular disease and stroke;
- (2) morbidity and mortality rates for cardiovascular disease and stroke; and
- (3) community indicators relevant to cardiovascular disease and stroke.

(c) In compiling the database, the council may use information available from other sources, such as the Behavioral Risk Factor Surveillance System established by the Centers for Disease Control and Prevention, reports of hospital discharge data, and information included in death certificates.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.054. INFORMATION RECEIVED FROM ANOTHER STATE AGENCY; CONFIDENTIALITY. (a) To perform its duties under this chapter, the council may request and receive information in the possession of any state agency. In addition to the restriction imposed by Subsection (b), information provided to the council under this subsection is subject to any restriction on disclosure or use of the information that is imposed by law on the agency from which the council obtained the information.

(b) Information in the possession of the council that identifies a patient or that is otherwise confidential under law is confidential, is excepted from required public disclosure under Chapter 552, Government Code, and may not be disclosed for any purpose.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

#### **CHAPTER 94. STATE PLAN FOR HEPATITIS C; EDUCATION AND PREVENTION PROGRAM**

Sec. 94.001. STATE PLAN FOR HEPATITIS C. (a) The department shall develop a state plan for prevention and treatment of hepatitis C. The plan must include strategies for prevention and treatment of hepatitis C in specific demographic groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high risk behavior, such as intravenous drug use.

(b) In developing the plan, the department shall seek the input of:

(1) the public, including members of the public that have hepatitis C;

(2) each state agency that provides services to persons with hepatitis C or the functions of which otherwise involve hepatitis C, including any appropriate health and human services agency described by Section 531.001, Government Code;

(3) any advisory body that addresses issues related to hepatitis C;

(4) public advocates concerned with issues related to hepatitis C; and

(5) providers of services to persons with hepatitis C.

(c) The department shall update the state plan developed under this section biennially.

Added by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 13, eff.

June 17, 2011.

Sec. 94.002. HEPATITIS C EDUCATION AND PREVENTION PROGRAM. (a) The department shall develop a program to heighten awareness and enhance knowledge and understanding of hepatitis C. The department shall:

(1) conduct a seroprevalence study to estimate the current and future impact of hepatitis C on the state;

(2) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors, the value of early detection, available screening services, and the options available for the treatment of hepatitis C;

(3) provide training to public health clinic staff regarding the treatment, detection, and methods of transmission of hepatitis C;

(4) identify to health care providers and employers the benefits of disease awareness and prevention; and

(5) develop a prevention program to reduce the risk of transmission of hepatitis C.

(b) In developing the prevention program required by Subsection (a)(5), the department may forecast the economic and clinical impacts of hepatitis C and the impact of hepatitis C on quality of life. The department may develop the forecasts in conjunction with an academic medical center or a nonprofit institution with experience using disease management prospective modeling and simulation techniques.

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 93.001 and amended by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

Sec. 94.003. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under Section 85.082 in each public health region to make confidential counseling and testing available.

(b) The department may contract with public and private entities to perform the testing as necessary according to local

circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who intentionally violates Subsection (c) is liable to a person injured by the violation. The injured person may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

- (1) the greater of \$1,000 or actual damages; and
- (2) reasonable attorney's fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999.  
Renumbered from Sec. 93.002 by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

Sec. 94.004. TRAINING OF COUNSELORS. (a) The department shall develop and offer a training course for persons providing hepatitis C counseling. The training course must include information relating to the special needs of persons with positive hepatitis C test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for hepatitis C counseling and testing programs through a contract with the department. The board shall set the fee in an amount necessary to cover the costs of providing the course.

(d) The department may contract for the training of counselors.

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999.  
Renumbered from Sec. 93.003 by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

## CHAPTER 95. DIABETES

**SUBCHAPTER A. RISK ASSESSMENT FOR TYPE 2 DIABETES**

Sec. 95.001. DEFINITIONS. In this subchapter:

(1) "Acanthosis nigricans" means a light brown or black velvety, rough, or thickened area on the surface of the skin that may signal high insulin levels indicative of insulin resistance.

(2) "Advisory committee" means the Type 2 Diabetes Risk Assessment Program Advisory Committee established under Section 95.006.

(3) "Council" means the Texas Diabetes Council.

(4) "Office" means The University of Texas-Pan American Border Health Office.

(5) "Professional examination" means an evaluation performed by an appropriately licensed professional.

(6) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 3, eff. September 1, 2011.

Sec. 95.002. TYPE 2 DIABETES EDUCATION AND RISK ASSESSMENT PROGRAM. (a) The office shall administer a risk assessment program for Type 2 diabetes in accordance with this chapter.

(b) The office, after reviewing recommendations made by the advisory committee, by rule shall coordinate the risk assessment for Type 2 diabetes of individuals who attend public or private schools located in Texas Education Agency Regional Education Service Centers 1, 2, 3, 4, 10, 11, 13, 15, 18, 19, and 20 and, by using existing funding as efficiently as possible or by using other available funding, in additional regional education service centers.

(c) The rules must include procedures necessary to administer the risk assessment program, including procedures that require each school to record and report risk assessment activities using:

(1) an existing database used to administer and track risk assessment data; or

(2) widely accepted surveillance software selected by the office.

(d) The office shall require a risk assessment for Type 2 diabetes to be performed at the same time hearing and vision screening is performed under Chapter 36 or spinal screening is performed under Chapter 37. The risk assessment for Type 2 diabetes should:

(1) identify students with acanthosis nigricans; and

(2) further assess students identified under Subdivision

(1) to determine the students':

(A) body mass index; and

(B) blood pressure.

(e) The office may:

(1) coordinate the risk assessment for Type 2 diabetes activities of school districts, private schools, state agencies, volunteer organizations, universities, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative; and

(2) provide technical assistance to those entities in developing risk assessment programs.

(f) The office shall:

(1) provide educational and other material to assist local risk assessment activities;

(2) monitor the quality of risk assessment activities provided under this chapter; and

(3) consult with the Board of Nurse Examiners to determine the training requirements necessary for a nurse or other person to conduct risk assessment activities under this chapter.

(g) The office shall provide on the office's Internet website information on obesity, Type 2 diabetes, and related conditions to health care providers and update the information at least annually.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.



Sec. 95.003. COMPLIANCE WITH RISK ASSESSMENT REQUIREMENTS. (a) Each individual required by rules adopted under this chapter to be assessed shall undergo approved risk assessment for Type 2 diabetes. The individual shall comply with the requirements as soon as possible after the individual's admission to a school and as required by rule. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian may substitute a professional examination for the risk assessment.

(b) An individual is exempt from risk assessment if risk assessment conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian must submit to the chief administrator of the school on or before the day of the risk assessment process an affidavit stating the objections to the risk assessment.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the risk assessment requirements set by the office or submits an affidavit of exemption.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Sec. 95.004. RECORDS; REPORTS. (a) The chief administrator of each school shall maintain, on a form prescribed by the office, risk assessment records for each individual in attendance and enter the risk assessment information for each individual on the surveillance software selected by the office. The risk assessment records are open for inspection by the office or the local health department.

(b) The office may, directly or through local health departments, enter a school and inspect records maintained by the school relating to risk assessment for Type 2 diabetes.

(c) An individual's risk assessment records may be transferred among schools without the consent of the individual or, if the

individual is a minor, the minor's parent, managing conservator, or guardian.

(d) The person performing the risk assessment shall send a report indicating that an individual may be at risk for developing Type 2 diabetes to the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian. The report must include:

(1) an explanation of:

(A) the process for assessing risk for developing Type 2 diabetes;

(B) the reasons the individual was identified in the risk assessment process as being at risk for developing Type 2 diabetes;

(C) the risk factors associated with developing Type 2 diabetes; and

(D) the individual's body mass index;

(2) a statement concerning an individual's or family's need for further evaluation for Type 2 diabetes and related conditions;

(3) instructions to help the individual or family receive evaluation by a physician or other health care provider; and

(4) information on procedures for applying for the state child health plan program and the state Medicaid program.

(e) Each school shall submit to the office an annual report on the risk assessment status of the individuals in attendance during the reporting year and shall include in the report any other information required by the office.

(f) The report required under Subsection (e) must:

(1) be compiled from the information entered into the surveillance software;

(2) be on a form prescribed by the office; and

(3) be submitted according to the timetable established by the office's rules.

(g) After the end of the reporting period under Subsection (e), the office shall:

(1) analyze and compile a summary of the reports submitted by schools during that reporting period;

(2) file a copy of the summary with the advisory committee; and

(3) post on an Internet website accessible to each school required to submit a report under Subsection (e):

(A) the number of students and the percentage of the student population identified by each of those schools during the reporting period as at risk for Type 2 diabetes; and

(B) comparison data and analyses regarding the information required to be reported under that subsection.

(h) The office shall deliver to the chief administrator of each school and the school nurse or other person responsible for conducting risk assessment activities for the school under this chapter an annual summary compilation of the reports submitted by schools under Subsection (e).

(i) Not later than January 15 of each odd-numbered year, the office shall submit to the governor and the legislature a report relating to the implementation and effectiveness of the Type 2 diabetes risk assessment program established by this chapter that includes a detailed description of the expenses related to the program.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Sec. 95.005. GIFTS AND GRANTS. The office may accept gifts, grants, and donations to support the Type 2 diabetes risk assessment program conducted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.

Sec. 95.006. ADVISORY COMMITTEE. (a) The Type 2 Diabetes Risk Assessment Program Advisory Committee is established to advise the office on the Type 2 diabetes risk assessment program conducted under this chapter.

(b) The advisory committee is composed of:

(1) the following representatives appointed by the executive director of the office:

(A) one representative of the office;

(B) one representative of the Texas Education Agency;

(C) one representative of the Texas Pediatric Society;

(D) one representative of the American Diabetes Association;

(E) one school nurse representative from an urban school located within the boundaries of a regional education service center;

(F) one parent or guardian of a child who resides within the boundaries of a regional education service center; and

(G) one person with knowledge and experience in health care in school settings; and

(2) the following representatives appointed by the chairman of the council:

(A) one representative of the council;

(B) one representative of the Texas Medical Association;

(C) one school district administrator representative from a school district located within the boundaries of a regional education service center;

(D) one school principal representative from a school district located within the boundaries of a regional education service center; and

(E) one school nurse representative from a rural school located within the boundaries of a regional education service center.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a health care profession or related business or another profession related to the operation of the council.

(d) The representative of the office appointed under Subsection (b)(1)(A) shall serve as the presiding officer of the advisory committee.

(e) The advisory committee shall meet at least twice a year and at other times at the call of the presiding officer. The advisory committee may meet by teleconference if an in-person meeting of all the members is not practicable.

(f) Members of the advisory committee may not receive compensation for service on the committee. An advisory committee member is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the advisory committee to the extent that funds are available to the office for that purpose.

(g) Chapter 2110, Government Code, does not apply to the size,

composition, or duration of the advisory committee.

(h) The advisory committee shall:

(1) recommend the person who should be responsible for conducting risk assessment activities under this chapter for schools that do not employ a school nurse;

(2) advise the office on the age groups that would benefit most from the risk assessment activities under this chapter;

(3) recommend a method to record and report the number of children who are identified in the risk assessment process as being at risk for having or developing Type 2 diabetes and who qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.;

(4) recommend a deadline, which may not be later than the first anniversary of the date the advisory committee submits a recommendation to the office under this section, by which the office shall implement the advisory committee's recommended risk assessment activities, surveillance methods, reports, and quality improvements;

(5) contribute to the state plan for diabetes treatment developed by the council under Section 103.013 by providing statistics and information on the risk assessment activities conducted under this chapter and recommendations for assisting children in this state at risk for developing Type 2 diabetes; and

(6) recommend any additional information to be included in the report required by Section 95.004.

(i) The advisory committee shall submit to the office a report of the recommendations developed under Subsection (h) not later than September 1 of each even-numbered year. The office, subject to the availability of funds, shall implement each advisory committee recommendation concerning the Type 2 diabetes risk assessment program.

(j) In this section, "regional education service center" means a Texas Education Agency Regional Education Service Center listed in Section 95.002(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 5.02, eff. June 17, 2011.

**SUBCHAPTER B. DIABETES MELLITUS REGISTRY**

Sec. 95.051. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of State Health Services.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (3) "Public health district" means a district created under Chapter 121.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

Sec. 95.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a public health district that serves a county that has a population of more than 1.5 million and in which more than 75 percent of the population lives in a single municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

Sec. 95.053. DIABETES MELLITUS REGISTRY. (a) The department, in coordination with participating public health districts, shall create and maintain an electronic diabetes mellitus registry to track the glycosylated hemoglobin level of each person who has a laboratory test to determine that level performed at a clinical laboratory in the participating district.

(b) A public health district may participate in the diabetes mellitus registry. A public health district that participates in the registry is solely responsible for the costs of establishing and administering the program in that district.

(c) Except as provided by Subsection (d), a physician practicing in a participating public health district who, on or after November 1, 2011, orders a glycosylated hemoglobin test for a patient shall submit to a clinical laboratory located in the participating public health district the diagnosis codes of a patient along with the patient's sample. The clinical laboratory shall submit to the district for a patient whose diagnosis codes were submitted with the patient's sample the results of the patient's glycosylated hemoglobin test along with the diagnosis codes provided by the physician for

that patient.

(d) A physician who orders a glycosylated hemoglobin test for a patient must provide the patient with a form developed by the department that allows the patient to opt out of having the patient's information included in the registry. If the patient opts out by signing the form, the physician:

(1) shall keep the form in the patient's medical records;

and

(2) may not submit to the clinical laboratory the patient's diagnosis codes along with the patient's sample.

(e) The participating public health districts shall:

(1) compile results submitted under Subsection (c) in order to track:

(A) the prevalence of diabetes mellitus among people tested in the district;

(B) the level of diabetic control for the patients with diabetes mellitus in each demographic group;

(C) the trends of new diagnoses of diabetes mellitus in the district; and

(D) the health care costs associated with diabetes mellitus and glycosylated hemoglobin testing; and

(2) provide the department with de-identified aggregate data.

(f) The department and participating public health districts shall promote discussion and public information programs regarding diabetes mellitus.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

Sec. 95.054. CONFIDENTIALITY. Reports, records, and information obtained under this subchapter are not public health information under Chapter 552, Government Code, and are subject to the confidentiality requirements described by Section 81.046.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

Sec. 95.055. RULES. The executive commissioner shall adopt

rules to implement this subchapter, including rules to govern the format and method of collecting glycosylated hemoglobin data.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

Sec. 95.056. REPORT. Not later than December 1 of each even-numbered year, the department shall submit to the governor, lieutenant governor, speaker of the house of representatives, and appropriate standing committees of the legislature a report regarding the diabetes mellitus registry that includes an evaluation of the effectiveness of the registry and the number of public health districts voluntarily participating in the registry.

Added by Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 4, eff. September 1, 2011.

#### **CHAPTER 95A. REPORTS ON PREVENTION AND TREATMENT OF DIABETES**

Sec. 95A.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Council" means the Texas Diabetes Council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.

Sec. 95A.002. BIENNIAL REPORT ON COMMISSION'S PRIORITIES FOR ADDRESSING DIABETES. (a) The commission, in coordination with the council, shall prepare a biennial report that identifies the commission's priorities for addressing diabetes within the Medicaid population.

(b) Not later than December 1 of each even-numbered year, the commission shall submit the report to the legislature and the governor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.



**CHAPTER 96. RESPIRATORY SYNCYTIAL VIRUS**

Sec. 96.001. DEFINITIONS. In this chapter:

- (1) "Department" means the Department of State Health Services.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (3) "Health facility" includes:
  - (A) a general or special hospital licensed by the department under Chapter 241;
  - (B) a physician-owned or physician-operated clinic;
  - (C) a publicly or privately funded medical school;
  - (D) a state hospital or state school maintained and managed by the Department of State Health Services or the Department of Aging and Disability Services;
  - (E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and
  - (F) another facility specified by a rule adopted by the executive commissioner.
- (4) "Local health unit" has the meaning assigned by Section 121.004.
- (5) "RSV" means respiratory syncytial virus.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

- (1) for statistical purposes, if released in a manner that

prevents the identification of any person;

(2) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and rules relating to the identification, monitoring, and referral of children with RSV; or

(3) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.003. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.004. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the sentinel surveillance program.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.005. SENTINEL SURVEILLANCE PROGRAM. (a) The executive commissioner shall establish in the department a program to:

(1) identify by sentinel surveillance RSV infection in children; and

(2) maintain a central database of laboratory-confirmed cases of RSV that can be used to investigate the incidence, prevalence, and trends of RSV.

(b) In establishing the sentinel surveillance program for RSV, the executive commissioner shall consider:

(1) the number and geographic distribution of children in the state;

(2) the location of health facilities that collect RSV information locally; and

(3) the use of existing data collected by health facilities.

(c) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter, including rules that specify a system for selecting the demographic areas in which the department collects information.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.006. DATA COLLECTION. (a) To ensure an accurate source of data, the executive commissioner may require a health facility or health professional to make available for review by the department or by an authorized agent medical records or other information that is in the facility's or professional's custody or control and that relates to an occurrence of RSV.

(b) The executive commissioner by rule shall prescribe the manner in which data are reported to the department.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.007. DATABASE. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central database to facilitate information sharing and provider education.

(b) The department may use the database to:

(1) design and evaluate measures to prevent the occurrence of RSV and other health conditions; and

(2) provide information and education to providers on the incidence of RSV infection.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff.

September 1, 2005.

**CHAPTER 97. ARTHRITIS CONTROL AND PREVENTION**

Sec. 97.001. DEFINITIONS. In this chapter:

- (1) "Arthritis" means a rheumatic disease consisting of the chronic inflammation of joints, muscles, or connective tissue.
- (2) "Program" means the arthritis control and prevention program.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.002. ARTHRITIS CONTROL AND PREVENTION PROGRAM. To the extent that money has been appropriated or is otherwise available, the department shall develop and implement an arthritis control and prevention program to:

- (1) heighten awareness and enhance knowledge and understanding of arthritis among consumers, health professionals, teachers, and human services providers; and
- (2) work to increase and improve community-based services available to persons with arthritis and their families.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.003. NEEDS ASSESSMENT. As part of the program, the department shall work with public and private organizations to assess the current status of arthritis, considering information such as:

- (1) mortality and morbidity;
- (2) public and professional awareness; and
- (3) educational needs for and support services available to people with arthritis.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.003 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.004. PUBLIC AWARENESS. (a) The department through the program shall work with public and private organizations to raise public awareness of:

- (1) the causes and nature of arthritis;
- (2) personal risk factors;
- (3) the value of prevention and early detection;
- (4) ways to minimize preventable pain; and
- (5) options for diagnosing and treating arthritis.

(b) The department may use strategies, including strategies consistent with the National Arthritis Action Plan and other state arthritis planning efforts to heighten public awareness under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.005. TECHNICAL ASSISTANCE. In implementing the program, the department may:

- (1) identify, replicate, and use successful evidence-based arthritis programs; and
- (2) obtain relevant materials and services from organizations with appropriate expertise and knowledge of arthritis.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.006. ADMINISTRATIVE PROVISIONS. (a) The department may enter into contracts or agreements as necessary to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any money received through appropriations, grants, donations, or contributions from public or private sources to develop and implement the program.

(c) The department shall provide and train staff to implement the program.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September 1, 2007.

Sec. 97.007. ARTHRITIS ADVISORY COMMITTEE. (a) The department shall establish and coordinate the Arthritis Advisory Committee. The committee consists of members appointed by the commissioner, including:

- (1) persons with arthritis;
- (2) public health educators or other persons knowledgeable in health education;
- (3) medical experts on arthritis;
- (4) providers of arthritis health care; and
- (5) representatives of national arthritis organizations and their local chapters.

(b) The committee shall advise the department on developing and implementing the program.

(c) A member of the committee receives no additional compensation for serving on the committee and may not be reimbursed for travel or other expenses incurred while conducting the business of the committee.

(d) The committee is not subject to Chapter 2110, Government Code.

Added by Acts 2005, 79th Leg., Ch. 326 (S.B. 691), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 96.007 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(45), eff. September

1, 2007.

**CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND  
PREVENTABLE ADVERSE EVENTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 98.001. DEFINITIONS. In this chapter:

- (1) "Advisory panel" means the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events.
- (2) "Ambulatory surgical center" means a facility licensed under Chapter 243.
- (3) "Commissioner" means the commissioner of state health services.
- (4) "Department" means the Department of State Health Services.
- (5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (6) "General hospital" means a general hospital licensed under Chapter 241 or a hospital that provides surgical or obstetrical services and that is maintained or operated by this state. The term does not include a comprehensive medical rehabilitation hospital.
- (7) "Health care-associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.
- (8) "Health care facility" means a general hospital or an ambulatory surgical center.
- (8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.
- (9) "Infection rate" means the number of health care-associated infections of a particular type at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection, unless the term is modified by rule of the executive commissioner to accomplish the purposes of this chapter.
- (10) "Pediatric and adolescent hospital" has the meaning assigned by Section 241.003.

(10-a) "Potentially preventable complication" and "potentially preventable readmission" have the meanings assigned by Section 1002.001, Health and Safety Code.

(11) "Reporting system" means the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System.

(12) "Special care setting" means a unit or service of a general hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit, and a critical care unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(b), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.01, eff. September 28, 2011.

Sec. 98.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

#### **SUBCHAPTER B. ADVISORY PANEL**

Sec. 98.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events within the department to guide the implementation, development, maintenance, and evaluation of the reporting system. The commissioner may establish one or more subcommittees to assist the advisory panel in addressing health care-associated infections and preventable adverse events relating to hospital care provided to children or other special patient populations.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.



Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(c), eff. September 1, 2009.

Sec. 98.052. MEMBERSHIP; TERM. (a) The advisory panel is composed of 18 members as follows:

- (1) two infection control professionals who:
    - (A) are certified by the Certification Board of Infection Control and Epidemiology; and
    - (B) are practicing in hospitals in this state, at least one of which must be a rural hospital;
  - (2) two infection control professionals who:
    - (A) are certified by the Certification Board of Infection Control and Epidemiology; and
    - (B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;
  - (3) three board-certified or board-eligible physicians who:
    - (A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state and at least one of whom is a pediatric infectious disease physician with expertise and experience in pediatric health care epidemiology;
    - (B) are active members of the Society for Healthcare Epidemiology of America; and
    - (C) have demonstrated expertise in quality assessment and performance improvement or infection control in health care facilities;
  - (4) four additional professionals in quality assessment and performance improvement;
  - (5) one officer of a general hospital;
  - (6) one officer of an ambulatory surgical center;
  - (7) three nonvoting members who are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and
  - (8) two members who represent the public as consumers.
- (b) Members of the advisory panel serve two-year terms.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(d), eff. September 1, 2009.

Sec. 98.053. MEMBER ELIGIBILITY. (a) A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

(b) A person may not be a member of the advisory panel if the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members. The officers serve two-year terms.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.055. COMPENSATION; EXPENSES. Members of the advisory panel serve without compensation but are entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory panel from department funds, in accordance with the General Appropriations Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

**SUBCHAPTER C. DUTIES OF DEPARTMENT AND ADVISORY PANEL; REPORTING SYSTEM**

Sec. 98.101. RULEMAKING. (a) The executive commissioner may adopt rules for the department to implement this chapter.

(b) The executive commissioner may not adopt rules that conflict with or duplicate any federally mandated infection reporting program or requirement.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

**Sec. 98.102. DEPARTMENTAL RESPONSIBILITIES; REPORTING SYSTEM.**

(a) The department shall establish the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System within the department. The purpose of the reporting system is to provide for:

- (1) the reporting of health care-associated infections by health care facilities to the department;
- (2) the reporting of health care-associated preventable adverse events by health care facilities to the department;
- (3) the public reporting of information regarding the health care-associated infections by the department;
- (4) the public reporting of information regarding health care-associated preventable adverse events by the department; and
- (5) the education and training of health care facility staff by the department regarding this chapter.

(b) The reporting system shall provide a mechanism for this state to collect data, at state expense, through a secure electronic interface with health care facilities.

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

- (1) avoid duplicate submission of records;
- (2) allow the department to verify the accuracy and completeness of the data reported; and
- (3) for data reported under Section 98.103, allow the department to risk adjust the facilities' infection rates.

(d) The department shall review the infection control and

reporting activities of health care facilities to ensure the data provided by the facilities is valid and does not have unusual data patterns or trends that suggest implausible infection rates.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(e), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.02, eff. September 28, 2011.

Sec. 98.103. REPORTABLE INFECTIONS. (a) A health care facility, other than a pediatric and adolescent hospital, shall report to the department the incidence of surgical site infections, including the causative pathogen if the infection is laboratory-confirmed, occurring in the following procedures:

- (1) colon surgeries;
- (2) hip arthroplasties;
- (3) knee arthroplasties;
- (4) abdominal hysterectomies;
- (5) vaginal hysterectomies;
- (6) coronary artery bypass grafts; and
- (7) vascular procedures.

(b) A pediatric and adolescent hospital shall report the incidence of surgical site infections, including the causative pathogen if the infection is laboratory-confirmed, occurring in the following procedures to the department:

- (1) cardiac procedures, excluding thoracic cardiac procedures;
- (2) ventricular shunt procedures; and
- (3) spinal surgery with instrumentation.

(c) A general hospital shall report the following to the department:

- (1) the incidence of laboratory-confirmed central line-associated primary bloodstream infections, including the causative pathogen, occurring in any special care setting in the hospital; and
- (2) the incidence of respiratory syncytial virus occurring in any pediatric inpatient unit in the hospital.

(d) The department shall ensure that the health care-associated infections a health care facility is required to report under this section have the meanings assigned by the federal Centers for Disease Control and Prevention.

(d-1) The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor, to receive reports of health care-associated infections from health care facilities on behalf of the department. A health care facility must file a report required in accordance with a designation made under this subsection in accordance with the National Healthcare Safety Network's definitions, methods, requirements, and procedures. A health care facility shall authorize the department to have access to facility-specific data contained in a report filed with the National Healthcare Safety Network in accordance with a designation made under this subsection.

(e) A report made under this section must specify whether the infection resulted in the death of the patient while hospitalized.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 369 (H.B. 1362), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.03, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 1, eff. September 1, 2013.

Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a) Each health care facility shall report to the department the occurrence of any of the following preventable adverse events involving the facility's patient:

(1) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment to the facility under a policy adopted by the federal Centers for Medicare and Medicaid Services; and

(2) subject to Subsection (b), an event included in the list of adverse events identified by the National Quality Forum that is not included under Subdivision (1).

(b) The executive commissioner may exclude an adverse event described by Subsection (a)(2) from the reporting requirement of Subsection (a) if the executive commissioner, in consultation with the advisory panel, determines that the adverse event is not an appropriate indicator of a preventable adverse event.

(c) The executive commissioner by rule may designate an agency of the United States Department of Health and Human Services to receive reports of preventable adverse events by health care facilities on behalf of the department. A health care facility shall authorize the department to have access to facility-specific data contained in a report made in accordance with a designation made under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(f), eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.04, eff. September 28, 2011.

Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY PREVENTABLE EVENTS FOR HOSPITALS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(b) The department shall make the reports compiled under Subsection (a) available to the public on the department's Internet website.

(c) The department may not disclose the identity of a patient or health care professional in the reports authorized in this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.

Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING OF ADVERSE HEALTH CONDITIONS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department shall study which adverse health conditions commonly occur in long-term care facilities and, of those health conditions, which are potentially preventable.

(b) The department shall develop recommendations for reporting adverse health conditions identified under Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.

Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the recommendations of the advisory panel, the executive commissioner by rule may modify in accordance with this chapter the list of procedures that are reportable under Section 98.103. The modifications must be based on changes in reporting guidelines and in definitions established by the federal Centers for Disease Control and Prevention.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.06, eff. September 28, 2011.

Sec. 98.106. DEPARTMENTAL SUMMARY. (a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Section 98.103, including whether the infections resulted in the death of the patient while hospitalized; and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the departmental summary with respect to infections reported by facilities under Section 98.103 must be risk adjusted and include a comparison of the risk-adjusted

infection rates for each health care facility in this state that is required to submit a report under Section 98.103.

(c) In consultation with the advisory panel, the department shall publish the departmental summary in a format that is easy to read.

(d) The department shall publish the departmental summary at least annually and may publish the summary more frequently as the department considers appropriate. Data made available to the public must include aggregate data covering a period of at least a full calendar quarter.

(e) The executive commissioner by rule shall allow a health care facility to submit concise written comments regarding information contained in the departmental summary that relates to the facility. The department shall attach the facility's comments to the public report and the comments must be in the same format as the summary.

(f) The disclosure of written comments to the department by a health care facility as provided by Subsection (e) does not constitute a waiver of a privilege or protection under Section 98.109.

(g) The department shall make the departmental summary available on an Internet website administered by the department and may make the summary available through other formats accessible to the public. The website must contain a statement informing the public of the option to report suspected health care-associated infections and preventable adverse events to the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(g), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.07, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 2, eff. September 1, 2013.

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas



Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.08, eff. September 28, 2011.

Sec. 98.107. EDUCATION AND TRAINING REGARDING REPORTING SYSTEM. The department shall provide education and training for health care facility staff regarding this chapter. The training must be reasonable in scope and focus primarily on:

- (1) the implementation and management of a facility reporting mechanism;
- (2) characteristics of the reporting system, including public reporting by the department and facility reporting to the department;
- (3) confidentiality; and
- (4) legal protections.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.108. FREQUENCY OF REPORTING. (a) In consultation with the advisory panel, the executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103 and 98.1045.

(b) Except as provided by Subsection (c), facilities may not be required to report more frequently than quarterly.

(c) The executive commissioner may adopt rules requiring reporting more frequently than quarterly if more frequent reporting is necessary to meet the requirements for participation in the federal Centers for Disease Control and Prevention's National Healthcare Safety Network.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(h), eff.

September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.09, eff. September 28, 2011.

Sec. 98.109. CONFIDENTIALITY; PRIVILEGE. (a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled or reported by a health care facility or an entity that has an ownership or management interest in a facility.

(b-1) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials obtained, compiled, or reported by the department under this chapter.

(c) The transfer of information or materials under this chapter is not a waiver of a privilege or protection granted under law.

(d) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a health care facility in compliance with or as authorized under this chapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(e) A department summary or disclosure may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific incident.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(i), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.10, eff. September 28, 2011.

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES. (a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the Health and Human Services Commission, to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

(b) If the executive commissioner designates an agency of the United States Department of Health and Human Services to receive reports of health care-associated infections or preventable adverse events, that agency may use the information submitted for purposes allowed by federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.11, eff. September 28, 2011.

Sec. 98.111. CIVIL ACTION. Published infection rates or preventable adverse events may not be used in a civil action to establish a standard of care applicable to a health care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

#### **SUBCHAPTER D. ENFORCEMENT**

Sec. 98.151. VIOLATIONS. (a) Except as provided by Subsection (b), a general hospital that violates this chapter or a rule adopted under this chapter is subject to the enforcement provisions of Subchapter C, Chapter 241, and rules adopted and enforced under that subchapter as if the hospital violated Chapter 241 or a rule adopted under that chapter.

(b) Subsection (a) does not apply to a comprehensive medical rehabilitation hospital as defined in Section 241.003.

(c) An ambulatory surgical center that violates this chapter or a rule adopted under this chapter is subject to the enforcement provisions of Chapter 243 and rules adopted and enforced under that chapter as if the center violated Chapter 243 or a rule adopted under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

#### **SUBTITLE E. HEALTH CARE COUNCILS AND RESOURCE CENTERS**

##### **CHAPTER 101. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED DISORDERS**

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid victims of Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of victims of Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for victims of Alzheimer's disease and related disorders and their caregivers.

(2) "Council" means the Texas Council on Alzheimer's Disease and Related Disorders.

(3) "Primary family caregiver" means an individual who is a relative of a victim of Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the victim, and who is not a professional health care provider paid to care for the victim.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.002. COMPOSITION OF COUNCIL. (a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a victim of Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing homes, physicians, nurses, public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the chief executive officer or the officer's designated representative from the department, Texas Department on Aging, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, and Long-Term Care Coordinating Council for the Elderly.

(b) The governor shall appoint two public members and two professional members, the lieutenant governor shall appoint two public members and two professional members, and the speaker of the house of representatives shall appoint one public member and three professional members.

(c) The governor shall designate a member of the council who is not an agency representative as the chairman of the council to serve in that capacity at the will of the governor.

(d) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 10.01, eff. Sept. 1, 1999.

Sec. 101.0021. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.0022. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by Section 101.002(a);

(2) does not maintain during service on the council the qualifications required by Section 101.002(a);

(3) is ineligible for membership under Section 101.0021;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the

council of the potential ground. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the commissioner shall notify the next highest ranking officer of the council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.0023. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the council;
- (2) the programs operated by the council;
- (3) the role and functions of the council;
- (4) the rules of the council;
- (5) the current budget for the council;
- (6) the results of the most recent formal audit of the council;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the

person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.004. TERMS; VACANCY. (a) Appointed council members serve for staggered six-year terms, with the terms of four members expiring August 31 of each odd-numbered year.

(b) If a vacancy occurs, the appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(c) A person who has served one full term is not eligible for reappointment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 494, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.005. COMPENSATION. (a) A member of the council is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

(b) A representative of a state agency shall be reimbursed from the funds of the agency the person represents. Other members shall be reimbursed from funds made available to the council.

(c) If funds are not made available to the council, members who are not representatives of state agencies serve at their own expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.006. MEETINGS. (a) The council shall meet at least twice each calendar year and at the call of the chairman.

(b) The council shall adopt rules for the conduct of its meetings.

(c) Any action taken by the council must be approved by a majority of the members present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 101.0065. PUBLIC TESTIMONY. The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.03, eff. Sept. 1, 1999.

Sec. 101.007. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) advise the board and recommend needed action for the benefit of victims of Alzheimer's disease and related disorders and for their caregivers;

(2) coordinate public and private family support networking systems for primary family caregivers;

(3) disseminate information on services and related activities for victims of Alzheimer's disease and related disorders to the medical and health care community, the academic community, primary family caregivers, advocacy associations, and the public;

(4) coordinate a volunteer assistance program primarily for in-home and respite care services;

(5) encourage research to benefit victims of Alzheimer's disease and related disorders;

(6) recommend to the board disbursement of grants and funds available for the council; and

(7) facilitate coordination of state agency services and activities relating to victims of Alzheimer's disease and related disorders.

(b) The council is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), eff. Sept. 1, 1995.

Sec. 101.0075. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the commissioner and

the staff of the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.04, eff. Sept. 1, 1999.

Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

- (1) provide administrative assistance, services, and materials to the council;
- (2) accept, deposit, and disburse funds made available to the council at the direction of the board;
- (3) accept gifts and grants on behalf of the council from any public or private entity;
- (4) maintain a population data base of victims of Alzheimer's disease and related disorders in this state; and
- (5) apply for and receive on behalf of the council any appropriations, gifts, or other funds from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.0081. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.05, eff. Sept. 1, 1999.

Sec. 101.009. GIFTS AND GRANTS. (a) The council is encouraged to seek and the department may accept on behalf of the council a gift or grant from any public or private entity.

(b) The board shall deposit any money received under Subsection (a) in the state treasury to the credit of the Alzheimer's disease and related disorders council fund to be used for the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.010. REPORT. Before September 1 of each even-numbered year, the council shall submit a biennial report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, members of the legislature, Long-Term Care Coordinating Council for the Elderly, and board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 102. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Institute" means the Cancer Prevention and Research Institute of Texas.

(2) "Oversight committee" means the Cancer Prevention and Research Institute of Texas Oversight Committee.

(2-a) "Program integration committee" means the Cancer Prevention and Research Institute of Texas Program Integration Committee.

(3) "Research and prevention programs committee" means a Cancer Prevention and Research Institute of Texas Scientific Research and Prevention Programs committee appointed by the chief executive officer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 1, eff. June 14, 2013.

Sec. 102.002. PURPOSES. The Cancer Prevention and Research Institute of Texas is established to:

(1) create and expedite innovation in the area of cancer research and in enhancing the potential for a medical or scientific

breakthrough in the prevention of cancer and cures for cancer;

(2) attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in this state; and

(3) develop and implement the Texas Cancer Plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.06, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.003. SUNSET PROVISION. The Cancer Prevention and Research Institute of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.24, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.02, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.02, eff. June 15, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.002, eff. September 1, 2009.

Sec. 102.004. STATE AUDITOR. Nothing in this chapter limits the authority of the state auditor under Chapter 321, Government Code, or other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 2,

eff. June 14, 2013.

**SUBCHAPTER B. POWERS AND DUTIES OF INSTITUTE**

Sec. 102.051. POWERS AND DUTIES. (a) The institute:

(1) may make grants to provide funds to public or private persons to implement the Texas Cancer Plan, and may make grants to institutions of learning and to advanced medical research facilities and collaborations in this state for:

(A) research into the causes of and cures for all types of cancer in humans;

(B) facilities for use in research into the causes of and cures for cancer;

(C) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans; and

(D) cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans;

(2) may support institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment;

(3) may establish the appropriate standards and oversight bodies to ensure the proper use of funds authorized under this chapter for cancer research and facilities development;

(4) may employ necessary staff to provide administrative support;

(5) shall continuously monitor contracts and agreements authorized by this chapter and ensure that each grant recipient complies with the terms and conditions of the grant contract;

(6) shall ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(7) shall establish procedures to document that the institute, its employees, and its committee members appointed under this chapter comply with all laws and rules governing the peer review process and conflicts of interest.

(b) The institute shall work to implement the Texas Cancer Plan and continually monitor and revise the Texas Cancer Plan as necessary.

(c) The institute shall employ a chief compliance officer to monitor and report to the oversight committee regarding compliance with this chapter and rules adopted under this chapter.

(d) The chief compliance officer shall:

(1) ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(2) attend and observe the meetings of the program integration committee to ensure compliance with this chapter and rules adopted under this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 3, eff. June 14, 2013.

Sec. 102.0511. CHIEF EXECUTIVE OFFICER; OTHER OFFICERS. (a) The oversight committee shall hire a chief executive officer. The chief executive officer shall perform the duties required by this chapter or designated by the oversight committee.

(b) The chief executive officer must have a demonstrated ability to lead and develop academic, commercial, and governmental partnerships and coalitions.

(c) The chief executive officer shall hire:

(1) one chief scientific officer;

(2) one chief operating officer;

(3) one chief product development officer; and

(4) one chief prevention officer.

(d) The officers described by Subsections (c)(1)-(4) shall report directly to the chief executive officer and assist the chief executive officer in collaborative outreach to further cancer research and prevention.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 4, eff. June 14, 2013.

Sec. 102.052. ANNUAL PUBLIC REPORT; INTERNET POSTING. (a) Not later than January 31 of each year, the institute shall submit to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters and post on the institute's Internet website a report outlining the institute's activities, grants awarded, grants in progress, research accomplishments, and future program directions. The report must include:

- (1) the number and dollar amounts of research and facilities grants;
- (2) identification of the grant recipients for the reported year;
- (3) the institute's administrative expenses;
- (4) an assessment of the availability of funding for cancer research from sources other than the institute;
- (5) a summary of findings of research funded by the institute, including promising new research areas;
- (6) an assessment of the relationship between the institute's grants and the overall strategy of its research program;
- (7) a statement of the institute's strategic research and financial plans;
- (8) an estimate of how much cancer has cost the state during the year, including the amounts spent by the state relating to cancer by the child health program, the Medicaid program, the Teacher Retirement System of Texas, and the Employees Retirement System of Texas;
- (9) a statement of the institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities; and
- (10) for the previous 12 months, a list of any conflicts of interest under this chapter or rules adopted under this chapter, any conflicts of interest that require recusal under Section 102.1061, any unreported conflicts of interest confirmed by an investigation conducted under Section 102.1063, including any actions taken by the institute regarding an unreported conflict of interest and subsequent investigation, and any waivers granted through the process established under Section 102.1062.

(b) The institute shall submit the annual public report to the governor and the legislature.

(c) The institute shall post on the institute's Internet website the list described by Subsection (a)(10).

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 6, eff. June 14, 2013.

Sec. 102.053. INDEPENDENT FINANCIAL AUDIT FOR REVIEW BY COMPTROLLER. (a) The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm. The institute shall provide the audit to the comptroller. The comptroller shall review and evaluate the audit and annually issue a public report of that review. The comptroller shall make recommendations concerning the institute's financial practices and performance.

(b) The oversight committee shall review the annual financial audit, the comptroller's report and evaluation of that audit, and the financial practices of the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.0535. GRANT RECORDS. (a) The institute shall maintain complete records of:

(1) the review of each grant application submitted to the institute, including the score assigned to each grant application reviewed by a research and prevention programs committee in accordance with rules adopted under Section 102.251(a)(1), even if the grant application is not funded by the institute or is withdrawn after submission to the institute;

(2) each grant recipient's financial reports, including the amount of matching funds dedicated to the research specified for the grant award;

(3) each grant recipient's progress reports;



(4) for the purpose of determining any conflict of interest, the identity of each principal investor and owner of each grant recipient as provided by institute rules; and

(5) the institute's review of the grant recipient's financial reports and progress reports.

(b) The institute shall have periodic audits made of any electronic grant management system used to maintain records of grant applications and grant awards under this section. The institute shall address in a timely manner each weakness identified in an audit of the system.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 7, eff. June 14, 2013.

Sec. 102.054. GIFTS AND GRANTS. The institute may solicit and accept gifts and grants from any source for the purposes of this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.055. QUARTERLY MEETINGS. The oversight committee shall hold a public meeting at least once in each quarter of the calendar year, with appropriate notice and with a formal public comment period.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.056. SALARY. (a) The institute may not supplement the salary of any institute employee with a gift or grant received by the institute.

(b) The institute may supplement the salary of the chief scientific officer. Funding for a salary supplement for the chief scientific officer may only come from legislative appropriations or bond proceeds.

(c) The institute may not supplement the salary of the chief executive officer. The salary of the chief executive officer may only be paid from legislative appropriations.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 8, eff. June 14, 2013.

Sec. 102.057. PROHIBITED OFFICE LOCATION. An institute employee may not have an office in a facility owned by an entity receiving or applying to receive money from the institute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 9, eff. June 14, 2013.

#### **SUBCHAPTER C. OVERSIGHT COMMITTEE**

Sec. 102.101. COMPOSITION OF OVERSIGHT COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas Oversight Committee is the governing body of the institute.

(b) The oversight committee is composed of the following nine members:

- (1) three members appointed by the governor;
- (2) three members appointed by the lieutenant governor; and
- (3) three members appointed by the speaker of the house of representatives.

(c) The members of the oversight committee must represent the geographic and cultural diversity of the state.

(d) In making appointments to the oversight committee, the governor, lieutenant governor, and speaker of the house of representatives:

- (1) must each appoint at least one person who is a physician or a scientist with extensive experience in the field of oncology or public health; and
- (2) should attempt to include cancer survivors and family members of cancer patients if possible.

(e) A person may not be a member of the oversight committee if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money from the institute;

(2) owns or controls, directly or indirectly, an interest in a business entity or other organization receiving money from the institute; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the institute, other than reimbursement authorized by this chapter for oversight committee membership, attendance, or expenses.

(f) A person appointed to the oversight committee shall disclose to the institute each political contribution to a candidate for a state or federal office over \$1,000 made by the person in the five years preceding the person's appointment and each year after the person's appointment until the person's term expires. The institute annually shall post a report of the political contributions made by oversight committee members on the institute's publicly accessible Internet website and post a link to the report on the oversight committee's main Internet web page.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 10, eff. June 14, 2013.

Sec. 102.102. REMOVAL. (a) It is a ground for removal from the oversight committee that a member:

(1) is ineligible for membership under Section 102.101(e);

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled oversight committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(b) The validity of an action of the oversight committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(c) If the chief executive officer has knowledge that a

potential ground for removal exists, the chief executive officer shall notify the presiding officer of the oversight committee of the potential ground. The presiding officer shall then notify the appointing authority and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the chief executive officer shall notify the next highest ranking officer of the oversight committee, who shall then notify the appointing authority and the attorney general that a potential ground for removal exists.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 11, eff. June 14, 2013.

Sec. 102.103. TERMS; VACANCY. (a) Oversight committee members appointed by the governor, lieutenant governor, and speaker of the house serve at the pleasure of the appointing office for staggered six-year terms, with the terms of three members expiring on January 31 of each odd-numbered year.

(b) Not later than the 30th day after the date an oversight committee member's term expires, the appropriate appointing authority shall appoint a replacement.

(c) If a vacancy occurs on the oversight committee, the appropriate appointing authority shall appoint a successor, in the same manner as the original appointment, to serve for the remainder of the unexpired term. The appropriate appointing authority shall appoint the successor not later than the 30th day after the date the vacancy occurs.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 3, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 12, eff. June 14, 2013.

Sec. 102.104. OFFICERS. (a) The oversight committee shall elect a presiding officer and assistant presiding officer from among its members every two years. The oversight committee may elect additional officers from among its members.

(b) The presiding officer and assistant presiding officer may not serve in the position to which the officer was elected for two consecutive terms.

(c) The oversight committee shall:

(1) establish and approve duties and responsibilities for officers of the committee; and

(2) develop and implement policies that distinguish the responsibilities of the oversight committee and the committee's officers from the responsibilities of the chief executive officer and the employees of the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 13, eff. June 14, 2013.

Sec. 102.105. EXPENSES. A member of the oversight committee is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.106. CONFLICT OF INTEREST. (a) The oversight committee shall adopt conflict-of-interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern members of the oversight committee, the program integration committee, the research and prevention programs committees, and institute employees.

(b) An institute employee, oversight committee member, program integration committee member, or research and prevention programs

committee member shall recuse himself or herself, as provided by Section 102.1061(a), (b), or (c) as applicable, if the employee or member, or a person who is related to the employee or member within the second degree of affinity or consanguinity, has a professional or financial interest in an entity receiving or applying to receive money from the institute.

(c) A person has a professional interest in an entity receiving or applying to receive money from the institute if the person:

(1) is a member of the board of directors, another governing board, or any committee of the entity, or of a foundation or similar organization affiliated with the entity, during the same grant cycle;

(2) serves as an elected or appointed officer of the entity or of a foundation or similar organization affiliated with the entity;

(3) is an employee of or is negotiating future employment with the entity or with a foundation or similar organization affiliated with the entity;

(4) represents the entity or a foundation or similar organization affiliated with the entity;

(5) is a professional associate of a primary member of the entity's research or prevention program team;

(6) is, or within the preceding six years has been, a student, postdoctoral associate, or part of a laboratory research group for a primary member of the entity's research or prevention program team;

(7) is engaged or is actively planning to be engaged in collaboration with a primary member of the entity's research or prevention program team; or

(8) has long-standing scientific differences or disagreements with a primary member of the entity's research or prevention program team, and those differences:

(A) are known to the professional community; and

(B) could be perceived as affecting objectivity.

(d) A person has a financial interest in an entity receiving or applying to receive money from the institute if the person:

(1) owns or controls, directly or indirectly, an ownership interest, including sharing in profits, proceeds, or capital gains, in an entity receiving or applying to receive money from the institute or in a foundation or similar organization affiliated with

the entity; or

(2) could reasonably foresee that an action taken by the institute, a research and prevention programs committee, the program integration committee, or the oversight committee could result in a financial benefit to the person.

(e) Nothing in this chapter limits the authority of the oversight committee to adopt additional conflict-of-interest standards.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 14, eff. June 14, 2013.

Sec. 102.1061. DISCLOSURE OF CONFLICT OF INTEREST; RECUSAL.

(a) If an oversight committee member or program integration committee member has a conflict of interest as described by Section 102.106 regarding an application that comes before the member for review or other action, the member shall:

(1) provide written notice to the chief executive officer and the presiding officer of the oversight committee or the next ranking member of the committee if the presiding officer has the conflict of interest;

(2) disclose the conflict of interest in an open meeting of the oversight committee; and

(3) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(b) If an institute employee has a conflict of interest described by Section 102.106 regarding an application that comes before the employee for review or other action, the employee shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review of the application and be prevented from accessing information regarding the matter to be decided.

(c) If a research and prevention programs committee member has a conflict of interest described by Section 102.106 regarding an

application that comes before the member's committee for review or other action, the member shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(d) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee with a conflict of interest may seek a waiver as provided by Section 102.1062.

(e) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who reports a potential conflict of interest or another impropriety or self-dealing of the member or employee and who fully complies with the recommendations of the general counsel and recusal requirements is considered in compliance with the conflict-of-interest provisions of this chapter. The member or employee is subject to other applicable laws, rules, requirements, and prohibitions.

(f) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who intentionally violates this section is subject to removal from further participation in the institute's grant review process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1062. EXCEPTIONAL CIRCUMSTANCES REQUIRING PARTICIPATION. The oversight committee shall adopt rules governing the waiver of the conflict-of-interest requirements of this chapter under exceptional circumstances for an oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee. The rules must:

(1) authorize the chief executive officer or an oversight committee member to propose the granting of a waiver by submitting to the presiding officer of the oversight committee a written statement about the conflict of interest, the exceptional circumstance



requiring the waiver, and any proposed limitations to the waiver;

(2) require a proposed waiver to be publicly reported at a meeting of the oversight committee;

(3) require a majority vote of the oversight committee members present and voting to grant a waiver;

(4) require any waiver granted to be reported annually to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters; and

(5) require the institute to retain documentation of each waiver granted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1063. INVESTIGATION OF UNREPORTED CONFLICTS OF INTEREST. (a) An oversight committee member, a program integration committee member, a research and prevention programs committee member, or an institute employee who becomes aware of a potential conflict of interest described by Section 102.106 that has not been reported shall immediately notify the chief executive officer of the potential conflict of interest. On notification, the chief executive officer shall notify the presiding officer of the oversight committee and the general counsel, who shall determine the nature and extent of any unreported conflict.

(b) A grant applicant seeking an investigation regarding whether a prohibited conflict of interest was not reported shall file a written request with the institute's chief executive officer. The applicant must:

(1) include in the request all facts regarding the alleged conflict of interest; and

(2) submit the request not later than the 30th day after the date the chief executive officer presents final funding recommendations for the affected grant cycle to the oversight committee.

(c) On notification of an alleged conflict of interest under Subsection (a) or (b), the institute's general counsel shall:

(1) investigate the matter; and

(2) provide to the chief executive officer and presiding

officer of the oversight committee an opinion that includes:

(A) a statement of facts;

(B) a determination of whether a conflict of interest or another impropriety or self-dealing exists; and

(C) if the opinion provides that a conflict of interest or another impropriety or self-dealing exists, recommendations for an appropriate course of action.

(d) If the conflict of interest, impropriety, or self-dealing involves the presiding officer of the oversight committee, the institute's general counsel shall provide the opinion to the next ranking oversight committee member who is not involved with the conflict of interest, impropriety, or self-dealing.

(e) After receiving the opinion and consulting with the presiding officer of the oversight committee, the chief executive officer shall take action regarding the recusal of the individual from any discussion of or access to information related to the conflict of interest or other recommended action related to the impropriety or self-dealing. If the alleged conflict of interest, impropriety, or self-dealing is held by, or is an act of, the chief executive officer, the presiding officer of the oversight committee shall take actions regarding the recusal or other action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1064. FINAL DETERMINATION OF UNREPORTED CONFLICT OF INTEREST. (a) The chief executive officer or, if applicable, the presiding officer of the oversight committee shall make a determination regarding the existence of an unreported conflict of interest described by Section 102.1063 or other impropriety or self-dealing. The determination must specify any actions to be taken to address the conflict of interest, impropriety, or self-dealing, including:

(1) reconsideration of the application; or

(2) referral of the application to another research and prevention programs committee for review.

(b) The determination made under Subsection (a) is considered final unless three or more oversight committee members request that the issue be added to the agenda of the oversight committee.

(c) The chief executive officer or, if applicable, the presiding officer of the oversight committee, shall provide written notice of the final determination, including any further actions to be taken, to the grant applicant requesting the investigation.

(d) Unless specifically determined by the chief executive officer or, if applicable, the presiding officer of the oversight committee, or the oversight committee, the validity of an action taken on a grant application is not affected by the fact that an individual who failed to report a conflict of interest participated in the action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.107. POWERS AND DUTIES. The oversight committee shall:

- (1) hire a chief executive officer;
- (2) annually set priorities as prescribed by the legislature for each grant program that receives money under this chapter; and
- (3) consider the priorities set under Subdivision (2) in awarding grants under this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 16, eff. June 14, 2013.

Sec. 102.108. RULEMAKING AUTHORITY. The oversight committee may adopt rules to administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 4, eff. June 19, 2009.

Sec. 102.109. CODE OF CONDUCT. (a) The oversight committee shall adopt a code of conduct applicable to each oversight committee member, program integration committee member, and institute employee.

(b) The code of conduct at a minimum must include provisions prohibiting the member, the employee, or the member's or employee's spouse from:

(1) accepting or soliciting any gift, favor, or service that could reasonably influence the member or employee in the discharge of official duties or that the member, employee, or spouse of the member or employee knows or should know is being offered with the intent to influence the member's or employee's official conduct;

(2) accepting employment or engaging in any business or professional activity that would reasonably require or induce the member or employee to disclose confidential information acquired in the member's or employee's official position;

(3) accepting other employment or compensation that could reasonably impair the member's or employee's independent judgment in the performance of official duties;

(4) making personal investments or having a financial interest that could reasonably create a substantial conflict between the member's or employee's private interest and the member's or employee's official duties;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for exercising the member's official powers or performing the member's or employee's official duties in favor of another;

(6) leasing, directly or indirectly, any property, capital equipment, employee, or service to any entity that receives a grant from the institute;

(7) submitting a grant application for funding by the institute;

(8) serving on the board of directors of an organization established with a grant from the institute; or

(9) serving on the board of directors of a grant recipient.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

Sec. 102.110. FINANCIAL STATEMENT REQUIRED. Each member of the oversight committee shall file with the chief compliance officer a verified financial statement complying with Sections 572.022 through 572.0252, Government Code, as required of a state officer by Section

572.021, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

#### SUBCHAPTER D. COMMITTEES

Sec. 102.151. SCIENTIFIC RESEARCH AND PREVENTION PROGRAMS COMMITTEE.

(a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 368, Sec. 16, eff. June 19, 2009.

(a-1) The oversight committee shall establish research and prevention programs committees. The chief executive officer, with approval by simple majority of the members of the oversight committee, shall appoint as members of research and prevention programs committees experts in the field of cancer research and prevention, including qualified trained cancer patient advocates who meet the qualifications developed by rule as provided by Subsection (c).

(b) The institute shall adopt a written policy on in-state or out-of-state residency requirements for members of the research and prevention programs committees.

(c) The oversight committee shall adopt rules regarding the qualifications required for an individual who will serve as a trained cancer patient advocate committee member for a research and prevention programs committee. The rules must require a trained cancer patient advocate to receive science-based training.

(d) A member of a scientific research and prevention programs committee may receive an honorarium. Subchapter B, Chapter 2254, Government Code, does not apply to an honorarium made to a committee member under this chapter.

(e) The chief executive officer, in consultation with the oversight committee, shall adopt a policy and document any change in the amount of honorarium paid to a member of a research and prevention programs committee, including information explaining the basis for changing the amount.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 5, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 16, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 18, eff. June 14, 2013.

Sec. 102.152. TERMS OF RESEARCH AND PREVENTION PROGRAMS COMMITTEE MEMBERS. Members of a research and prevention programs committee serve for terms as determined by the chief executive officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 6, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 19, eff. June 14, 2013.

Sec. 102.153. EXPENSES. Members of the university advisory committee or any ad hoc advisory committee appointed under this subchapter serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 8, eff. June 19, 2009.

Sec. 102.154. UNIVERSITY ADVISORY COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas University Advisory Committee is composed of the following members:

(1) two members appointed by the chancellor of The University of Texas System to represent:

(A) The University of Texas Southwestern Medical Center;

(B) The University of Texas Medical Branch at Galveston;

(C) The University of Texas Health Science Center at Houston;

(D) The University of Texas Health Science Center at San Antonio;

(E) The University of Texas Health Center at Tyler; or

(F) The University of Texas M. D. Anderson Cancer Center;

(2) one member appointed by the chancellor of The Texas A&M University System to represent:

(A) The Texas A&M University System Health Science Center; or

(B) the teaching hospital for The Texas A&M Health Science Center College of Medicine;

(3) one member appointed by the chancellor of the Texas Tech University System to represent the Texas Tech University Health Sciences Center;

(4) one member appointed by the chancellor of the University of Houston System to represent the system;

(5) one member appointed by the chancellor of the Texas State University System to represent the system;

(6) one member appointed by the chancellor of the University of North Texas System to represent the system;

(7) one member appointed by the president of Baylor College of Medicine;

(8) one member appointed by the president of Rice University; and

(9) members appointed at the executive director's discretion by the chancellors of other institutions.

(b) The university advisory committee shall advise the oversight committee and a research and prevention programs committee regarding the role of institutions of higher education in cancer research.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. [1358](#)), Sec. 9, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 14, eff. September 1, 2013.

Sec. 102.155. AD HOC ADVISORY COMMITTEE. (a) The oversight committee shall create an ad hoc committee of experts to address childhood cancers. The oversight committee, as necessary, may create additional ad hoc committees of experts to advise the oversight committee on issues relating to cancer.

(b) Ad hoc committee members shall serve for a period determined by the oversight committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.

Sec. 102.156. CONFLICT OF INTEREST. (a) A member of a research and prevention programs committee appointed under this subchapter shall disclose in writing to the chief executive officer if the member has a professional or financial interest, as defined by Section 102.106, in an entity that has a direct interest in a matter that comes before the member's committee.

(b) The member shall recuse himself or herself in the manner described by Section 102.1061 from the committee's deliberations and actions on the matter in Subsection (a) and may not participate in the committee's decision on the matter.

(c) A member of a research and prevention programs committee appointed under this chapter may not serve on the board of directors or other governing board of an entity receiving a grant from the institute or of a foundation or similar organization affiliated with the entity.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 20, eff. June 14, 2013.

#### **SUBCHAPTER E. CANCER PREVENTION AND RESEARCH FUND**

Sec. 102.201. CANCER PREVENTION AND RESEARCH FUND. (a) The



cancer prevention and research fund is a dedicated account in the general revenue fund.

(b) The cancer prevention and research fund consists of:

(1) appropriations of money to the fund by the legislature, except that the appropriated money may not include the proceeds from the issuance of bonds authorized by Section 67, Article III, Texas Constitution;

(2) gifts, grants, including grants from the federal government, and other donations received for the fund; and

(3) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for:

(1) grants for cancer research and for cancer research facilities in this state to realize therapies, protocols, and medical procedures for the cure or substantial mitigation of all types of cancer in humans;

(2) the purchase, subject to approval by the institute, of laboratory facilities by or on behalf of a state agency or grant recipient;

(3) grants to public or private persons to implement the Texas Cancer Plan;

(4) the operation of the institute;

(5) grants for cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans; and

(6) debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 21, eff. June 14, 2013.

Sec. 102.202. ISSUANCE OF GENERAL OBLIGATION BONDS. (a) The institute may request the Texas Public Finance Authority to issue and sell general obligation bonds of the state as authorized by Section 67, Article III, Texas Constitution.

(b) The Texas Public Finance Authority may not issue and sell general obligation bonds authorized by this section before January 1,

2008, and may not issue and sell more than \$300 million in general obligation bonds authorized by this section in a state fiscal year.

(c) The institute shall determine, and include in its request for issuing bonds, the amount, exclusive of costs of issuance, of the bonds to be issued and the preferred time for issuing the bonds.

(d) The Texas Public Finance Authority shall issue the bonds in accordance with and subject to Chapter 1232, Government Code, and Texas Public Finance Authority rules. The bonds may be issued in installments.

(e) Proceeds of the bonds issued under this section shall be deposited in separate funds or accounts, in the state treasury, as shall be set out in the proceedings authorizing the bonds.

(f) The proceeds of the bonds may be used only to:

(1) make grants authorized by Section 67, Article III, Texas Constitution;

(2) purchase laboratory facilities approved by the institute;

(3) pay costs of operating the institute; or

(4) pay the costs of issuing the bonds and related bond administration costs of the Texas Public Finance Authority.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.203. AUTHORIZED USE OF FUNDS. (a) A person awarded money from the cancer prevention and research fund or from bond proceeds under this subchapter may use the money for research consistent with the purpose of this chapter and in accordance with a contract between the person and the institute.

(b) Except as otherwise provided by this section, money awarded under this subchapter may be used for authorized expenses, including honoraria, salaries and benefits, travel, conference fees and expenses, consumable supplies, other operating expenses, contracted research and development, capital equipment, and construction or renovation of state or private facilities.

(c) A person receiving money under this subchapter for cancer research may not spend more than five percent of the money for indirect costs. For purposes of this subsection, "indirect costs"

means the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

(d) Not more than five percent of the money awarded under this subchapter may be used for facility purchase, construction, remodel, or renovation purposes during any year. Expenditures of money awarded under this subchapter for facility purchase, construction, remodel, or renovation projects must benefit cancer prevention and research.

(e) Not more than 10 percent of the money awarded under this subchapter may be used for cancer prevention and control programs during any year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 10, eff. June 19, 2009.

Sec. 102.204. PREFERENCE FOR TEXAS BUSINESSES. If the Texas Public Finance Authority contracts with a private entity to issue the bonds under this subchapter, the Texas Public Finance Authority shall consider contracting with an entity that has its principal place of business in this state and shall include using a historically underutilized business as defined by Section 2161.001, Government Code.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

#### **SUBCHAPTER F. PROCEDURE FOR MAKING AWARDS**

Sec. 102.251. RULES FOR GRANT AWARD PROCEDURE. (a) The oversight committee shall issue rules regarding the procedure for awarding grants to an applicant under this chapter. The rules must include the following procedures:

(1) a research and prevention programs committee shall score grant applications and make recommendations to the program

integration committee, established under Section 102.264, and the oversight committee regarding the award of cancer research and prevention grants, including a prioritized list that:

(A) ranks the grant applications in the order the committee determines applications should be funded; and

(B) includes information explaining how each grant application on the list meets the research and prevention programs committee's standards for recommendation;

(2) the program integration committee shall submit to the oversight committee a list of grant applications the program integration committee by majority vote approved for recommendation that:

(A) includes documentation on the factors the program integration committee considered in making the grant recommendations;

(B) is substantially based on the list submitted by the research and prevention programs committee under Subdivision (1); and

(C) to the extent possible, gives priority to proposals that:

(i) could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;

(ii) strengthen and enhance fundamental science in cancer research;

(iii) ensure a comprehensive coordinated approach to cancer research;

(iv) are interdisciplinary or interinstitutional;

(v) address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention or cures for cancer;

(vi) are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(vii) are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(viii) have a demonstrable economic development benefit to this state;

(ix) enhance research superiority at institutions of higher education in this state by creating new research

superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(x) expedite innovation and product development, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities; and

(xi) address the goals of the Texas Cancer Plan;  
and

(3) the institute's chief compliance officer shall compare each grant application submitted to the institute to a list of donors from any nonprofit organization established to provide support to the institute compiled from information made available under Section 102.262(c) before the application is submitted to a research and prevention programs committee for review and again before any grant is awarded to the applicant.

(b) A member of a research and prevention programs committee may not attempt to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(c) The chief executive officer shall submit a written affidavit for each grant application recommendation included on the list submitted to the oversight committee under Subsection (a)(2). The affidavit must contain all relevant information on:

- (1) the peer review process for the grant application;
- (2) the application's peer review score assigned by the research and prevention programs committee; and
- (3) if applicable, the intellectual property and other due diligence reviews of the application.

(d) A member of the program integration committee may not discuss a grant applicant recommendation with a member of the oversight committee unless the chief executive officer and the program integration committee have fulfilled the requirements of Subsections (a)(2) and (c), as applicable.

(e) The institute may not award a grant to an applicant who has made a gift or grant to the institute or a nonprofit organization established to provide support to the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 11, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 22, eff. June 14, 2013.

Sec. 102.252. FUNDING RECOMMENDATIONS. Two-thirds of the members of the oversight committee present and voting must vote to approve each funding recommendation of the program integration committee. If the oversight committee does not approve a funding recommendation of the program integration committee, a statement explaining the reasons a funding recommendation was not followed must be included in the minutes of the meeting.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 12, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 23, eff. June 14, 2013.

Sec. 102.253. MAXIMUM AMOUNT OF ANNUAL AWARDS. The oversight committee may not award more than \$300 million in grants under Subchapter E in a fiscal year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.254. PERIOD FOR AWARDS. The oversight committee may not award money under Subchapter E before January 1, 2008, or after August 31, 2020.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.255. CONTRACT TERMS. (a) The oversight committee shall negotiate on behalf of the state regarding awarding, by grant, money under this chapter.

(b) Before awarding a grant under Subchapter E, the committee shall enter into a written contract with the grant recipient. The contract may specify that:

(1) if all or any portion of the amount of the grant is used to build a capital improvement:

(A) the state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) the grant recipient shall, if the capital improvement is sold:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the contract; and

(ii) share with the state a proportionate amount of any profit realized from the sale;

(2) if the grant recipient has not used grant money awarded under Subchapter E for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest applicable under the contract to the state at the agreed rate and on the agreed terms; and

(3) if the grant recipient fails to meet the terms and conditions of the contract, the institute may terminate the contract using the written process prescribed in the contract and require the recipient to repay the grant money awarded under Subchapter E and any related interest applicable under the contract to this state at the agreed rate and on the agreed terms.

(c) The contract must:

(1) include terms relating to intellectual property rights consistent with the standards developed by the oversight committee under Section 102.256;

(2) require, in accordance with Subsection (d), the grant recipient to dedicate an amount of matching funds equal to one-half of the amount of the research grant awarded; and

(3) specify:

(A) the amount of matching funds to be dedicated under

Subdivision (2);

(B) the period in which the grant award must be spent;

(C) the name of the research project to which matching funds are to be dedicated; and

(D) the specific deliverables of the project that is the subject of the grant proposal.

(d) Before the oversight committee may make for cancer research any grant of any proceeds of the bonds issued under Subchapter E, the recipient of the grant must certify that the recipient has an amount of funds equal to one-half of the grant and dedicate those funds to the research that is the subject of the grant request. The institute shall adopt rules specifying how a grant recipient fulfills obligations under this subchapter. At a minimum, the rules must:

(1) allow a grant recipient that is a public or private institution of higher education, as defined by Section 61.003, Education Code, to credit toward the recipient's matching funds the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the recipient and the indirect cost rate authorized by Section 102.203(c);

(2) require that a grant recipient certify before the distribution of any money awarded under a grant for cancer research:

(A) that encumbered funds equal to one-half of the amount of the total grant award are available and not yet expended for research that is the subject of the grant; or

(B) if the grant recipient is a public or private institution of higher education, the indirect cost rate authorized by the federal research grants awarded to the recipient;

(3) specify that:

(A) a grant recipient receiving more than one grant award may provide matching funds certification at an institutional level;

(B) the recipient of a multiyear grant award may certify matching funds on a yearly basis; and

(C) grant funds may not be distributed to the grant recipient until the annual certification of the matching funds has been approved;

(4) specify that money used for purposes of certification may include:

(A) federal funds, including funds provided under the



American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(B) funds of this state;

(C) funds of other states; and

(D) nongovernmental funds, including private funds, foundation grants, gifts, and donations;

(5) specify that the following items do not qualify for purposes of the certification required by this subsection:

(A) in-kind costs;

(B) volunteer services furnished to a grant recipient;

(C) noncash contributions;

(D) income earned by the grant recipient that is not available at the time of the award;

(E) preexisting real estate of the grant recipient, including buildings, facilities, and land;

(F) deferred giving, including a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(G) other items as may be determined by the oversight committee;

(6) require a grant recipient and the institute to include the certification in the grant award contract;

(7) specify that a grant recipient's failure to provide certification shall serve as grounds for terminating the grant award contract;

(8) require a grant recipient to maintain adequate documentation supporting the source and use of the funds required by this subsection and to provide documentation to the institute upon request; and

(9) require that the institute establish a procedure to conduct an annual review of the documentation supporting the source and use of funds reported in the required certification.

(e) The institute shall adopt a policy on advance payments to grant recipients.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 13, eff.

June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 24, eff. June 14, 2013.

Sec. 102.256. PATENT ROYALTIES AND LICENSE REVENUES PAID TO STATE. (a) The oversight committee shall establish standards that require all grant awards to be subject to an intellectual property agreement that allows the state to collect royalties, income, and other benefits, including interest or proceeds resulting from securities and equity ownership, realized as a result of projects undertaken with money awarded under Subchapter E.

(b) In determining the state's interest in any intellectual property rights, the oversight committee shall balance the opportunity of the state to benefit from the patents, royalties, licenses, and other benefits that result from basic research, therapy development, and clinical trials with the need to ensure that essential medical research is not unreasonably hindered by the intellectual property agreement and that the agreement does not unreasonably remove the incentive on the part of the individual researcher, research team, or institution.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. 1421), Sec. 1, eff. September 1, 2011.

Sec. 102.257. MULTIYEAR PROJECTS. The oversight committee may grant funds for a multiyear project. The oversight committee must specify the total amount of money approved to fund the multiyear project. The total amount specified is considered for purposes of this subchapter to have been awarded in the state fiscal year that the project is approved by the research and prevention programs committee. The institute shall distribute only the money that will be expended during that fiscal year. The remaining money shall be distributed by the institute as the money is needed in each subsequent fiscal year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 521 (H.B. 2251), Sec. 6, eff. June 17, 2011.

Sec. 102.258. PREFERENCE FOR TEXAS SUPPLIERS. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from suppliers in this state to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from suppliers in this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.259. HISTORICALLY UNDERUTILIZED BUSINESSES. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other applicable state law.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.260. GRANT EVALUATION. (a) The oversight committee shall require as a condition of a grant that the grant recipient submit to regular inspection reviews of the grant project by institute staff, including progress oversight reviews, to ensure compliance with the terms of the award and to ensure the scientific merit of the research.

(b) The chief executive officer shall determine the grant review process under this section. The chief executive officer may terminate grants that do not meet contractual obligations.

(c) The chief executive officer shall report at least annually to the oversight committee on the progress and continued merit of each research program funded by the institute.

(d) The institute shall establish and implement reporting requirements to ensure that each grant recipient complies with the terms and conditions in the grant contract, including verification of the amounts of matching funds dedicated to the research that is the subject of the grant award to the grant recipient.

(e) The institute shall implement a system to:

(1) track the dates on which grant recipient reports are due and are received by the institute; and

(2) monitor the status of any required report that is not timely submitted to the institute by a grant recipient.

(f) The chief compliance officer shall monitor compliance with this section and at least annually shall inquire into and monitor the status of any required report that is not timely submitted to the institute by a grant recipient. The chief compliance officer shall notify the general counsel and the oversight committee of a grant recipient that has not maintained compliance with the reporting requirements or matching funds provisions of the grant contract to allow the institute to begin suspension or termination of the grant contract under Subsection (b). This subsection does not limit other remedies available under the grant contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 14, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 25, eff. June 14, 2013.

Sec. 102.261. MEDICAL ETHICS. Any research project that receives money under Subchapter E must:

(1) be conducted with full consideration for the ethical and medical implications of the research; and

(2) comply with all federal and state laws regarding the conduct of research.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.262. PUBLIC INFORMATION. (a) The following information is public information and may be disclosed under Chapter 552, Government Code:

- (1) the applicant's name and address;
- (2) the amount of funding applied for;
- (3) the type of cancer to be addressed under the proposal;

and

(4) any other information designated by the institute with the consent of the grant applicant.

(b) In order to protect the actual or potential value of information submitted to the institute by an applicant for or recipient of an institute grant, the following information submitted by such applicant or recipient is confidential and is not subject to disclosure under Chapter 552, Government Code, or any other law:

(1) all information, except as provided in Subsection (a), that is contained in a grant award contract between the institute and a grant recipient, relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information, including computer programs, developed in whole or in part by an applicant for or recipient of an institute grant, regardless of whether patentable or capable of being registered under copyright or trademark laws, that has a potential for being sold, traded, or licensed for a fee; and

(2) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

(c) The records of a nonprofit organization established to provide support to the institute are public information subject to Chapter 552, Government Code.

(d) The institute shall post on the institute's Internet website records that pertain specifically to any gift, grant, or other consideration provided to the institute, an institute employee, or a member of an institute committee. The posted information must include each donor's name and the amount and date of the donor's donation.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. [1358](#)), Sec. 15, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. [1421](#)), Sec. 2, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 761 (S.B. 895), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 26, eff. June 14, 2013.

Sec. 102.263. COMPLIANCE PROGRAM. (a) In this section, "compliance program" means a process to assess and ensure compliance by the institute's committee members and employees with applicable laws, rules, and policies, including matters of:

- (1) ethics and standards of conduct;
- (2) financial reporting;
- (3) internal accounting controls; and
- (4) auditing.

(b) The institute shall establish a compliance program that operates under the direction of the institute's chief compliance officer. The institute may establish procedures, such as a telephone hotline, to allow private access to the compliance program office and to preserve the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation.

(c) The following are confidential and are not subject to disclosure under Chapter 552, Government Code:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the institute's compliance program office, sought guidance from the office, or participated in an investigation conducted under the compliance program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the office if, after completing an investigation, the office determines the report to be unsubstantiated or without merit; and

(3) other information that is collected or produced in a compliance program investigation if releasing the information would interfere with an ongoing compliance investigation.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information made confidential or excepted from public disclosure by this section may be made available to the following on request in compliance with applicable laws and procedures:

- (1) a law enforcement agency or prosecutor;
- (2) a governmental agency responsible for investigating the matter that is the subject of a compliance report, including the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission; or
- (3) a committee member or institute employee who is responsible under institutional policy for a compliance program investigation or for a review of a compliance program investigation.

(f) A disclosure under Subsection (e) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

Sec. 102.2631. COMPLIANCE MATTERS; CLOSED MEETING. The oversight committee may conduct a closed meeting under Chapter 551, Government Code, to discuss an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

Sec. 102.264. PROGRAM INTEGRATION COMMITTEE. (a) The institute shall establish a program integration committee. The committee is composed of the following five members:

- (1) the chief executive officer;
- (2) the chief scientific officer;
- (3) the chief product development officer;
- (4) the commissioner of state health services; and
- (5) the chief prevention officer.

(b) The committee has the duties assigned under this chapter.

(c) The chief executive officer shall serve as the presiding officer of the program integration committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

**SUBCHAPTER G. CANCER PREVENTION AND RESEARCH INTEREST AND SINKING FUND**

Sec. 102.270. ESTABLISHMENT OF FUND. (a) The cancer prevention and research interest and sinking fund is a dedicated account in the general revenue fund.

(b) The fund consists of:

(1) patent, royalty, and license fees and other income received under a contract entered into as provided by Section 102.255; and

(2) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution, at a time and in a manner to be determined by the legislature in the General Appropriations Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 28, eff. June 14, 2013.

**CHAPTER 103. TEXAS DIABETES COUNCIL**

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Diabetes Council.

(2) "Person with diabetes" means a person diagnosed by a physician as having diabetes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.002. COMPOSITION OF COUNCIL. (a) The Texas Diabetes Council is composed of 11 citizen members appointed from the public and one representative each from the department, the Health and Human Services Commission, and the Department of Assistive and Rehabilitative Services.

(b) The governor, with the advice and consent of the senate, shall appoint the following citizen members:

(1) a licensed physician with a specialization in treating diabetes;

(2) a registered nurse with a specialization in diabetes education and training;



(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy;

(5) three consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Foundation or the American Diabetes Association; and

(6) four members from the general public with expertise or demonstrated commitment to diabetes issues.

(b-1) In making appointments under this section, the governor shall attempt to appoint members of different minority groups including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

(c) The chairman of the board of each agency listed in Subsection (a) shall appoint that agency's representative. Agency representatives shall be nonvoting members of the council.

(d) Appointments to the council shall be made without regard to the race, color, disability, creed, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.39, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 12.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 10.01, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. [3278](#)), Sec. 6, eff. June 17, 2011.

Sec. 103.0024. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the council;
- (2) the programs operated by the council;
- (3) the role and functions of the council;

- (4) the rules of the council;
- (5) the current budget for the council;
- (6) the results of the most recent formal audit of the council;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.0025. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.004. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible for appointment or service as a citizen member if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization receiving funds at the

council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.005. TERMS. (a) Council members appointed by the governor serve for staggered six-year terms, with the terms of three or four members expiring February 1 of each odd-numbered year.

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1285, Sec. 3.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1170, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 103.006. CHAIRMAN. The governor shall designate a member of the council as the chairman of the council to serve in that capacity at the will of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 12.02, eff. Sept. 1, 1999.

Sec. 103.007. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 103.004(a);

(2) is not eligible to serve on the council as provided by Section 103.004(a);

(3) violates a prohibition established by Section 103.004(b) or (c);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during each calendar year unless the absence is excused by majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a member of the council exists.

(c) If the chairman of the council has knowledge that a potential ground for removal exists, the chairman shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.008. VACANCY. (a) The office of a member appointed by an agency becomes vacant when the person terminates employment

with the agency or when the agency elects to replace the person as provided by Section 103.005.

(b) If the office of a member who is an agency representative becomes vacant, the chairman of the board of that agency shall appoint an agency representative to serve for the remainder of that member's term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1285, Sec. 3.02, eff. Sept. 1, 1997.

Sec. 103.009. REIMBURSEMENT. (a) The department shall reimburse council and advisory committee members for travel and other necessary expenses incurred in performing official duties at the same rate provided for state employees in the General Appropriations Act.

(b) Funds for travel reimbursement shall be appropriated to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.010. STAFF SUPPORT. Each agency represented on the council shall provide the council with periodic staff support of specialists as needed and may provide staff support to an advisory committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.0105. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.04, eff. Sept. 1, 1999.

Sec. 103.011. ADVISORY COMMITTEES. (a) The council may establish advisory committees the council considers necessary and may

determine the appropriate membership for each committee.

(b) The council shall specify the purpose and duties of each advisory committee and shall specify any product the committee is required to develop.

(c) Members of an advisory committee serve at the will of the council. The council may dissolve an advisory committee when necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.012. MEETINGS. (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) Any action taken by the council must be approved by a majority of the voting members present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 3, eff. Sept. 1, 1991.

Sec. 103.013. STATE PLAN. (a) The council shall develop and implement a state plan for diabetes treatment, education, and training to ensure that:

(1) this chapter is properly implemented by the agencies affected;

(2) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(3) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The state plan may include provisions to ensure that:

(1) individual and family needs are assessed statewide and all available resources are coordinated to meet those needs; and

(2) health care provider needs are assessed statewide and strategies are developed to meet those needs.

(c) The council shall make written recommendations for performing its duties under this chapter to the board and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

(d) The council shall submit the state plan to the state agency designated as the state health planning and development agency not later than November 1 of each odd-numbered year.

(e) Each state agency affected by the state plan shall:

(1) determine what resources would be required to implement the portions of the state plan affecting that agency; and

(2) determine whether that agency will seek funds to implement that portion of the state plan.

(f) Not later than November 1 of each even-numbered year, each state agency affected by the state plan shall report to the council, the Legislative Budget Board, and the Governor's Office of Budget and Planning:

(1) information determined under Subsection (e); and

(2) each deviation from the council's proposed plan, including an explanation for the deviation.

(g) The report required under Subsection (f) may be published electronically on a state agency's Internet website. A state agency that electronically publishes a report under this subsection shall notify each agency entitled to receive a copy of the report that the report is available on the agency's Internet website on or before the date the report is due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 64, eff. September 1, 2013.

Sec. 103.0131. ASSESSMENT OF PROGRAMS TO PREVENT AND TREAT DIABETES. (a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and treatment of individuals with diabetes that are administered by the Health and Human Services Commission or a health and human services agency, as defined by Section 531.001, Government Code. As part of the assessment, the council shall collect data regarding:

(1) the number of individuals served by the programs;

(2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and

(3) the number of health care providers treating

individuals with diabetes under the programs.

(b) Not later than November 1 of each odd-numbered year, the council shall submit to the governor, the lieutenant governor, and the legislature a written report containing the findings of the assessment conducted under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 2, eff. September 1, 2011.

Sec. 103.014. POWERS AND DUTIES. (a) The council shall address contemporary issues affecting health promotion services in the state, including:

- (1) professional and patient education;
- (2) successful diabetes education strategies;
- (3) personnel preparation and continuing education;
- (4) state expenditures for treatment of chronic diseases;
- (5) screening services; and
- (6) public awareness.

(b) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with diabetes. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with diabetes.

(c) The council may:

- (1) compile and publish regional directories of services for persons with diabetes;
- (2) design or adapt and publish a handbook in English and Spanish relating to diet, exercise, and other self-care management skills for persons with diabetes;
- (3) study the feasibility of a statewide hotline for persons with diabetes; and
- (4) study the standards and structure of pilot programs to provide diabetes education and training in this state.

(d) The council may engage in studies that it determines are necessary or suitable under the state plan as provided by this chapter.

(e) The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the



allocation of funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.015. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of a special account in the general revenue fund.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.016. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The council shall prepare information of public interest describing the functions of the council and describing council procedures by which complaints are filed with and resolved by the council. The council shall make the information available to the general public and appropriate state agencies.

(b) The council by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council.

(c) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 103.017. PUBLIC AWARENESS AND TRAINING. (a) The department, the Department of Assistive and Rehabilitative Services, and the Health and Human Services Commission shall work with the council to jointly develop, produce, and implement a general public awareness strategy focusing on diabetes, its complications, and

techniques for achieving good management. Each agency shall pay for the costs of producing and disseminating information on diabetes to clients served by that agency.

(b) The strategy developed under Subsection (a) must include a plan under which the council provides public awareness information through businesses, civic organizations, and similar entities.

(c) The department, the Department of Assistive and Rehabilitative Services, and the Health and Human Services Commission may jointly develop and implement a statewide plan for conducting regional training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

(d) The council must approve the strategies and plans developed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. [3278](#)), Sec. 7, eff. June 17, 2011.

Sec. 103.0175. MATERIALS FOR SCHOOL-BASED AND SCHOOL-LINKED CLINICS. The council, in consultation with the department, shall develop and make available materials that provide information about diabetes to be distributed to students and the parents of students by health clinics at public primary or secondary schools.

Added by Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997.

Sec. 103.019. AUDIT. The financial transactions pertaining to the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 39, eff. Sept. 1, 1991.

**For expiration of this chapter, see Section 103A.011.**

**CHAPTER 103A. TEXAS BLEEDING DISORDERS ADVISORY COUNCIL**

Sec. 103A.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Council" means the Texas Bleeding Disorders Advisory Council.
- (3) "Department" means the Department of State Health Services.
- (4) "Hemophilia" has the meaning assigned by Section 41.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.002. COMPOSITION OF COUNCIL. (a) The council is composed of:

- (1) the commissioner and the commissioner of insurance, or their designees, serving as nonvoting members; and
- (2) 10 voting members jointly appointed by the commissioner and the commissioner of insurance as follows:
  - (A) one member who is a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;
  - (B) one member who is a nurse licensed under Chapter 301, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;
  - (C) one member who is a social worker licensed under Chapter 505, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;
  - (D) one member who is a representative of a hemophilia treatment center in this state that is federally funded;
  - (E) one member who is a representative of a health insurer or other health benefit plan issuer that holds a certificate of authority issued by the Texas Department of Insurance;
  - (F) one member who is a representative of a volunteer or nonprofit health organization that serves residents of this state who have hemophilia or another bleeding or clotting disorder;

(G) one member who has hemophilia or is a caregiver of a person with hemophilia;

(H) one member who has a bleeding disorder other than hemophilia or is a caregiver of a person with a bleeding disorder other than hemophilia;

(I) one member who has a clotting disorder or is a caregiver of a person with a clotting disorder; and

(J) one member who is a pharmacist licensed under Subtitle J, Title 3, Occupations Code, with hemophilia therapy experience, who at the time of appointment represents a pharmacy provider that is not a specialty pharmacy provider participating in the Drug Pricing Program under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) In addition to council members appointed under Subsection (a), the commissioner and the commissioner of insurance may jointly appoint up to five nonvoting members, including:

(1) persons with hemophilia or other bleeding or clotting disorders or caregivers of persons with hemophilia or other bleeding or clotting disorders; and

(2) persons experienced in the diagnosis, treatment, care, and support of persons with hemophilia or other bleeding or clotting disorders.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.003. VACANCY. If a vacancy occurs on the council, the commissioner and the commissioner of insurance shall jointly appoint a person to serve for the remainder of the unexpired term.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.004. PRESIDING OFFICER. Council members shall elect from among the voting council members a presiding officer. The presiding officer retains all voting rights.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.005. COMPENSATION AND REIMBURSEMENT. A council member may not:

- (1) receive compensation for service on the council; and
- (2) be reimbursed for actual and necessary expenses incurred while performing council business except to the extent that money available under Section 103A.009 is designated for that purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.006. MEETINGS. The council shall meet at least quarterly and at the call of the commissioner or presiding officer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.007. DUTIES OF COUNCIL. The council using existing resources may conduct studies and advise the department, the Health and Human Services Commission, and the Texas Department of Insurance on:

- (1) public use data, outcome data, and other information submitted to or collected by the department under Chapter 108 or other law related to hemophilia or other bleeding or clotting disorders and the department's disclosure and dissemination of that information within and outside the department; and
- (2) other issues that affect the health and wellness of persons living with hemophilia or other bleeding or clotting disorders.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.008. ANNUAL REPORTS BY COUNCIL AND COMMISSIONER. (a) Not later than December 1 of each even-numbered year, the council using existing resources shall submit a report of its findings and

recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives. The council's report must be made public and is subject to public review and comment before adoption by the council.

(b) Not later than six months after the date the council's annual report is issued, the commissioner shall report on efforts to implement the recommendations in the report. The commissioner's annual report must:

- (1) be made available to the public; and
- (2) include any related state or national activities in which the council participates.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.009. GIFTS, GRANTS, AND DONATIONS. The commissioner may accept for the council gifts, grants, and donations to fulfill the council's purposes and duties under this chapter. The department is not required to perform any fund-raising activities or to solicit donations for the council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

Sec. 103A.011. EXPIRATION. This chapter expires and the council is abolished September 1, 2015.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 1, eff. September 1, 2011.

## **CHAPTER 104. STATEWIDE HEALTH COORDINATING COUNCIL AND STATE HEALTH PLAN**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 104.001. POLICY; PURPOSE. (a) The policy of this state and the purpose of this chapter are to ensure that health care services and facilities are available to all citizens in an orderly and economical manner.

- (b) To achieve this purpose it is essential that:

(1) appropriate health planning activities are undertaken and implemented; and

(2) health care services and facilities are provided in a cost-effective manner, compatible with the health care needs of the different areas and populations of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 18, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 1, eff. June 19, 2009.

Sec. 104.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of the Department of State Health Services.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical center, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, end stage renal disease facility, and inpatient rehabilitation facility. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 2, eff. June 19, 2009.

Sec. 104.004. INTERAGENCY COOPERATION. Each state agency, department, instrumentality, grantee, political subdivision, and institution of higher education shall cooperate with the department in performing assigned duties and functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.005. LIMITATIONS ON POWERS OF DEPARTMENT. This chapter does not authorize the department or an official or employee of the department to:

- (1) supervise or control the practice of medicine, the manner in which physician's services in private practice are provided, or the selection, tenure, compensation, or fees of a physician in the delivery of physician's services; or
- (2) perform a duty or function under Title XI of the Social Security Act (42 U.S.C. Sec. 1301 et seq.) or a rule or regulation adopted under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. STATEWIDE HEALTH COORDINATING COUNCIL**

Sec. 104.011. COMPOSITION OF COUNCIL. (a) The statewide health coordinating council is composed of 17 members determined as follows:

- (1) the executive commissioner or a representative designated by the executive commissioner;
- (2) the chair of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer;
- (3) the commissioner or a representative designated by the commissioner;
- (4) the presiding officer of the Department of Aging and Disability Services or a representative designated by the presiding officer; and
- (5) the following members appointed by the governor:
  - (A) three health care professionals from the allied health, dental, medical, mental health, and pharmacy professions, no two of whom may be from the same profession;
  - (B) one registered nurse;
  - (C) two representatives of a university or health-related institution of higher education;
  - (D) one representative of a junior or community college with a nursing program;
  - (E) one hospital administrator;



- (F) one managed care administrator; and
- (G) four public members.

(b) The appointments of the governor shall be with the advice and consent of the senate.

(c) The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

(d) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1386, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 11.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.192(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. [1326](#)), Sec. 3, eff. June 19, 2009.

Sec. 104.0111. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the statewide health coordinating council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.

Sec. 104.0112. GROUND FOR REMOVAL. (a) It is a ground for removal from the statewide health coordinating council that a member:

- (1) does not have at the time of taking office the qualifications required by Section 104.011(a);
- (2) does not maintain during service on the council the qualifications required by Section 104.011(a);
- (3) is ineligible for membership under Section 104.0111;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.

Sec. 104.0113. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the statewide health coordinating council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the council;
- (2) the programs operated by the council;
- (3) the role and functions of the council;

- (4) the rules of the council;
- (5) the current budget for the council;
- (6) the results of the most recent formal audit of the council;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.

Sec. 104.0115. TERMS. (a) Members of the council serve for staggered six-year terms, with the terms of four or five members expiring August 31 of each odd-numbered year.

(b) An appointment to fill a vacancy is for the unexpired term.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 20, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 728, Sec. 6, eff. June 20, 2003.

Sec. 104.012. RULES. The statewide health coordinating council shall adopt rules governing the development and implementation of the state health plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.013. FEES. The statewide health coordinating council may establish and charge fees for public health planning, data, and statistical services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.014. ASSISTANCE. The department, in accordance with rules adopted by the statewide health coordinating council, shall assist the council in performing the council's duties and functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.0141. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The statewide health coordinating council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.03, eff. Sept. 1, 1999.

Sec. 104.0142. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the statewide health coordinating council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.03, eff. Sept. 1, 1999.

Sec. 104.015. ADVISORY BOARDS AND AD HOC COMMITTEES. The statewide health coordinating council may form advisory boards or ad hoc committees composed of individuals from the public and private sectors to review policy matters related to the council's purpose.

Added by Acts 1997, 75th Leg., ch. 1386, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 4, eff. June 19, 2009.

Sec. 104.0155. NURSING ADVISORY COMMITTEE. (a) The statewide health coordinating council shall form a nursing advisory committee the majority of the members of which must be nurses. The committee:

(1) must include:

(A) members of associations that represent nurses, educators of nurses, and employers of nurses;

(B) members who represent the Texas Board of Nursing;  
and

(C) a nurse researcher; and

(2) may include other members who are health care experts from the public or private sector, nurses, nurse educators, employers of nurses, or consumers of nursing services.

(b) The committee shall:

(1) review policy matters on the collection of data and reports performed under Chapter 105 that relate to the nursing profession;

(2) subject to approval of the council, develop priorities and an operations plan for the nursing resource section under Section 105.002(b); and

(3) review reports and information before dissemination.

(c) A nurse member of the committee and a nurse member of the statewide health coordinating council shall cochair the committee.

(d) Chapter 2110, Government Code, does not apply to the committee formed under this section.

(e) Meetings of the committee under this section are subject to Chapter 551, Government Code.

Added by Acts 2003, 78th Leg., ch. 728, Sec. 7, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 5, eff. June 19, 2009.

Sec. 104.0156. HEALTH CARE INFORMATION TECHNOLOGY ADVISORY COMMITTEE. (a) The statewide health coordinating council shall form

an advisory committee on health care information technology. The committee must include representatives of interested groups, including the academic community, health plans, pharmacies, and associations of physicians, hospitals, and nurses. The committee must also include at least one member with at least 10 years of experience in the health care information technology industry.

(b) The advisory committee shall develop a long-range plan for health care information technology, including the use of electronic medical records, computerized clinical support systems, computerized physician order entry, regional data sharing interchanges for health care information, and other methods of incorporating information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care. In developing the long-range plan, the advisory committee shall study the effect of health care information technology on price disparities in insurance coverage for residents of this state.

(c) The advisory committee shall elect a presiding officer.

(d) Members of the advisory committee serve without compensation but are entitled to reimbursement for the members' travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

(e) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(f) Meetings of the advisory committee under this section are subject to Chapter 551, Government Code.

Added by Acts 2005, 79th Leg., Ch. 785 (S.B. 45), Sec. 1, eff. September 1, 2005.

Sec. 104.016. PUBLIC TESTIMONY. The statewide health coordinating council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.04, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. STATE HEALTH PLAN**

Sec. 104.021. PROPOSED STATE HEALTH PLAN. (a) The department, in accordance with rules adopted by the statewide health coordinating council, shall prepare and review a proposed state health plan every six years and shall revise and update the plan biennially.

(b) The department shall submit the proposed plan to the statewide health coordinating council.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 21, eff. Sept. 1, 1993.

Sec. 104.022. STATE HEALTH PLAN. (a) Information needed for the development of the state health plan shall be gathered through systematic methods designed to include local, regional, and statewide perspectives.

(b) The statewide health coordinating council, in consultation with the commission, shall issue overall directives for the development of the state health plan.

(c) The department shall consult with the Department of Aging and Disability Services, the commission, and other appropriate health-related state agencies designated by the governor before performing the duties and functions prescribed by state and federal law regarding the development of the state health plan.

(d) The statewide health coordinating council shall provide guidance to the department in developing the state health plan.

(e) The state health plan shall be developed and used in accordance with applicable state and federal law. The plan must identify:

- (1) major statewide health concerns;
- (2) the availability and use of current health resources of the state, including resources associated with information technology and state-supported institutions of higher education; and
- (3) future health service, information technology, and facility needs of the state.

(f) The state health plan must:

- (1) propose strategies for the correction of major deficiencies in the service delivery system;
- (2) propose strategies for incorporating information technology in the service delivery system;
- (3) propose strategies for involving state-supported

institutions of higher education in providing health services and for coordinating those efforts with health and human services agencies in order to close gaps in services; and

(4) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 627, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 22, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.126, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 785 (S.B. 45), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 6, eff. June 19, 2009.

Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide health coordinating council shall submit the state health plan to the Health and Human Services Commission for review and comment before the plan is sent to the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 627, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.127, eff. Sept. 1, 1995.

Sec. 104.024. SUBMISSION OF PLAN TO GOVERNOR. The statewide health coordinating council shall approve the state health plan for submission to the governor in accordance with applicable federal law and, not later than November 1 of each even-numbered year, submit the plan to the governor for adoption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.025. IMPLEMENTATION OF STATE HEALTH PLAN. The statewide health coordinating council shall promote the implementation of the recommendations made in the state health plan.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 104.026. COST DATA. (a) A state agency directly affected by a recommendation in the state health plan shall submit cost data for the implementation of the recommendation to the department and to the statewide health coordinating council, and shall indicate whether the agency is requesting funds in a manner consistent with the plan's recommendation.

(b) If the agency does not request funds consistent with the state health plan's recommendation, the agency shall submit an explanation and justification of any deviation.

(c) The department shall submit information received under this section to the Legislative Budget Board and the governor's budget office not later than November 1 of each even-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. THE DEPARTMENT AND THE STATE HEALTH PLAN**

Sec. 104.042. DATA COLLECTION. (a) The executive commissioner by rule shall establish reasonable procedures for the collection of data by the department from health care facilities and for the distribution of data necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The executive commissioner by rule shall specify the type of data required, the entities required to submit the data, and the period during which the data must be submitted.

(c) The department, in accordance with rules adopted by the statewide health coordinating council, shall collect and distribute data necessary to support specific state health plan goals.

(d) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(e) Data received by the department under this section containing information identifying specific patients is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless the information identifying the patient is removed. This subsection does not authorize the release of information that is confidential under Chapter 108.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2003, 78th Leg., ch. 728, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 7, eff. June 19, 2009.

Sec. 104.0421. STATEWIDE DATA COLLECTION AND COORDINATION. (a) The statewide health coordinating council shall work with appropriate health professional licensing agencies to develop uniform standards for health professional data collected by those agencies to enable the council to maintain a comprehensive health professional database.

(b) The council shall retrieve data on health professionals from the appropriate licensing agencies. The council may seek the assistance of the appropriate licensing agency or department in the retrieval of data on health professionals.

(c) The council shall monitor and evaluate long-term regional, statewide, and local health needs. The council shall use this evaluation for developing recommendations relating to health education, training, and regulation.

(d) The council shall use data collected under this section to develop workforce goals for health professionals and to recommend the appropriate level and distribution of state funding for education and training to achieve these goals. The council shall evaluate the short-term and long-term effects of the recommendations made under this subsection.

(e) The council shall, with the assistance of higher education agencies and institutions, area health education centers, teaching hospitals, and health education institutions, improve coordination of statewide health planning. The council may seek the assistance of the National Association of Health Data Organizations, the Association of American Medical Colleges, the National Council of State Legislatures, the American Association of Colleges of Osteopathic Medicine, the Association of American Health Centers, and any other appropriate entities.

(f) The department shall continue to assist the council and the health professions resource center with the development of the state health plan. The council shall coordinate related health planning functions within the department. The staff of the health professions

resource center shall continue to be department employees but are governed by the council.

Added by Acts 1997, 75th Leg., ch. 1386, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 8, eff. June 19, 2009.

Sec. 104.043. FAILURE TO SUBMIT DATA; CIVIL PENALTY. (a) If the department does not receive necessary data from an entity as required by the executive commissioner's rules, the department shall send to the entity a notice requiring the entity to submit the data not later than the 30th day after the date on which the entity receives the notice.

(b) An entity that does not submit the data during the period determined under Subsection (a) is subject to a civil penalty of not more than \$500 for each day after the period that the entity fails to submit the data.

(c) At the request of the executive commissioner, the attorney general shall sue in the name of the state to recover the civil penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 9, eff. June 19, 2009.

Sec. 104.044. SORTING COLLECTED DATA. (a) The department shall compile the health data collected under this subchapter and organize the results, to the extent possible, according to the following geographic areas:

- (1) the Texas-Mexico border region;
- (2) each public health region;
- (3) rural areas;
- (4) urban areas;
- (5) each county; and
- (6) the state.

(b) Health data released under this subchapter must be released in accordance with the way it is compiled under this section.

Added by Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 2, eff. September 1, 2005.

#### **CHAPTER 105. HEALTH PROFESSIONS RESOURCE CENTER**

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(2) "Council" means the statewide health coordinating council.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 3, eff. Sept. 1, 1997.

Sec. 105.002. ESTABLISHMENT OF CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the council shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) In conjunction with the committee formed under Section 104.0155, to avoid duplication of effort, and to the extent funding is available through fees collected under Section 301.155(c), Occupations Code, the council shall establish a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state.

(c) If the nursing resource section established under Subsection (b) is funded from surcharges collected under Section 301.155(c), Occupations Code, the council shall provide the Texas Board of Nursing with an annual accounting of the money received from the board. The council may expend a reasonable amount of the money to pay administrative costs of maintaining the nursing resource section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 9, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 1, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 62, eff. September 1, 2007.

Sec. 105.003. COLLECTION OF DATA. (a) The council shall place a high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

- (1) data concerning nursing personnel; and
- (2) data concerning the health professions in which shortages occur in rural areas.

(b) To the extent possible, the council may collect the data from existing sources that the council determines are credible. The council may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(c) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add and label as "mandatory" the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

- (1) full name and last four digits of social security number;
- (2) full mailing address; and
- (3) educational background and training, including basic health professions degree, school name and location of basic health professions degree, and graduation year for basic health professions degree, and, as applicable, highest professional degree obtained, related professional school name and location, and related graduation year.

(c-1) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

- (1) date and place of birth;
- (2) sex;
- (3) race and ethnicity;

- (4) location of high school;
- (5) mailing address of primary practice;
- (6) number of hours per week spent at primary practice location;
- (7) description of primary practice setting;
- (8) primary practice information, including primary specialty practice, practice location zip code, and county; and
- (9) information regarding any additional practice, including description of practice setting, practice location zip code, and county.

(c-2) The following health professionals are subject to this section:

- (1) audiologists;
- (2) chiropractors;
- (3) licensed professional counselors;
- (4) licensed chemical dependency counselors;
- (5) dentists;
- (6) dental hygienists;
- (7) emergency medical services personnel;
- (8) marriage and family therapists;
- (9) medical radiologic technologists;
- (10) licensed vocational nurses;
- (11) registered nurses;
- (12) certified nurse aides;
- (13) occupational therapists;
- (14) optometrists;
- (15) pharmacists;
- (16) physical therapists;
- (17) physicians;
- (18) physician assistants;
- (19) psychologists;
- (20) social workers; and
- (21) speech-language pathologists.

(c-3) The relevant members of the Health Professions Council shall encourage each person described by Subsection (c-2) licensed, certified, or registered under that council's authority to submit application and renewal information under Subsections (c) and (c-1) through the system developed by the Department of Information Resources and the state electronic Internet portal.

(d) To the extent feasible, the council shall use a researcher

with a doctorate in nursing to collect, analyze, and disseminate nursing data that may be used to predict supply and demand for nursing personnel in this state using appropriate federal or state supply-and-demand models. The nursing data must at least:

(1) include demographics, areas of practice, supply, demand, and migration; and

(2) be analyzed to identify trends relating to numbers and geographical distribution, practice setting, and area of practice and, to the extent possible, compare those trends with corresponding national trends.

(e) Data received under this section by the nursing resource section established under Section 105.002 that contains information identifying specific patients or health care facilities is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless all identifying information is removed.

(f) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the information collected under Subsections (c) and (c-1) is transmitted to the statewide health coordinating council. The council shall store the information as needed and conduct related workforce studies, including a determination of the geographical distribution of the reporting professionals.

(g) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the following information is submitted to the statewide health coordinating council for a person subject to Subsection (c-2):

(1) certification, registration, or license number;

(2) issuance date;

(3) method of certification, registration, or licensure;

and

(4) certification, registration, or licensure status.

(h) The Department of Information Resources shall work with the health occupation regulatory agencies that are members of the Health Professions Council to minimize the costs to Health Professions Council members of obtaining the information under Subsections (c) and (c-1). The Department of Information Resources shall provide the Health Professions Council with the appropriate federal information processing standards code based on the information in Subsections (c-1)(8) and (9).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 5, eff. Sept. 1,  
1997; Acts 2003, 78th Leg., ch. 728, Sec. 10, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 2, eff. May 20,  
2005.

Acts 2007, 80th Leg., R.S., Ch. 486 (S.B. 29), Sec. 1, eff. March  
1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 27, eff.  
June 17, 2011.

Sec. 105.004. REPORTS. (a) The council may use the data  
collected and analyzed under this chapter to publish reports  
regarding:

- (1) the educational and employment trends for health  
professions;
- (2) the supply and demand of health professions; and
- (3) other issues, as necessary, concerning health  
professions in this state.

(b) The council shall publish reports regarding the data  
collected and analyzed under this chapter related to:

- (1) the educational and employment trends of nursing  
professionals;
- (2) the supply and demand of nursing professionals; and
- (3) other issues, as determined necessary by the council,  
concerning nursing professionals in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 6, eff. Sept. 1,  
1997; Acts 2003, 78th Leg., ch. 728, Sec. 11, eff. June 20, 2003.

Sec. 105.005. RULES. The executive commissioner of the Health  
and Human Services Commission may adopt rules to govern the reporting  
and collection of data.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 10, eff.  
June 19, 2009.



Sec. 105.006. ASSISTANCE OF OTHER STATE AGENCIES. The Texas Higher Education Coordinating Board or the department may require the assistance of other state agencies or institutions of higher education for the development of, or the collection of data for, any report.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.001(a), eff. Sept. 1, 2003.

Sec. 105.007. CLEARINGHOUSE. (a) As part of the comprehensive health professions resource center, the council shall develop and establish a clearinghouse for health professionals seeking collaborative practice.

(b) The council may:

(1) set and collect a reasonable fee to offset the cost of complying with this section;

(2) solicit, receive, and spend grants, gifts, and donations from public and private sources to comply with this section; and

(3) contract with public or private entities in the performance of its responsibilities under this section.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 1, eff. June 16, 1995.  
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 7, eff. Sept. 1, 1997.

Sec. 105.008. STUDY OF ALTERNATE WAYS TO ASSURE CLINICAL COMPETENCY OF GRADUATES OF NURSING EDUCATIONAL PROGRAMS. (a) In this section:

(1) "Clinical competency assessment program" means a professional nursing prelicensure program that employs a criterion-referenced summative performance examination, developed by subject matter experts, to verify its graduates' attainment of the clinical competency necessary for initial licensure as a registered nurse.

(2) "Professional nursing prelicensure program" means a professional nursing educational program that prepares students to

obtain an initial license as a registered nurse.

(3) "Research study" means the study described by Subsection (b).

(4) "Supervised clinical learning experiences program" means a professional nursing prelicensure program that requires students to complete a required number of supervised clinical learning experiences provided by qualified clinical faculty involving multiple, ongoing assessments and feedback.

(b) To the extent funding is available, the nursing resource section established under Section 105.002(b) shall conduct a research study to identify:

(1) a set of expected student outcomes in terms of clinical judgment and behaviors that professional nursing students should possess at the time of graduation from a professional nursing prelicensure program;

(2) standardized, reliable, and valid clinical exit evaluation tools that could be used to evaluate the competencies in clinical judgment and behaviors that professional nursing students possess at the time of graduation from a professional nursing prelicensure program;

(3) any correlation between the success rate of graduates of professional nursing prelicensure programs on standardized clinical exit evaluation tools and their educational and experiential background, including:

(A) length and type of health care work experience before entering the professional nursing prelicensure programs;

(B) health care work experience during the professional nursing prelicensure programs; and

(C) alternative methods of teaching clinical judgment and behaviors, including supervised clinicals and simulation laboratories; and

(4) any correlation between the required number of hours in supervised clinical learning experiences and expected student outcomes in terms of clinical judgment and behaviors.

(c) In addition to any other objective, the research study must be designed to determine if the graduates of a clinical competency assessment program are substantially equivalent to the graduates of supervised clinical learning experiences programs in terms of clinical judgments and behaviors. For purposes of this subsection, the clinical competency assessment program must be one that:

(1) has been requiring a clinical competency assessment for at least 10 years;

(2) has students who reside in this state;

(3) has graduates who have been considered by the Texas Board of Nursing to be eligible to apply for a registered nurse license as a result of graduating from the program on or before January 1, 2007; and

(4) conducts the clinical competency assessment at a facility or facilities located in this state under the supervision of a qualified clinical faculty member who is a registered nurse and who holds a master's or doctoral degree in nursing.

(d) Considerations to be used in determining substantial equivalence under Subsection (c) must include the differences between the clinical competency assessment program and the supervised clinical learning experiences program in:

(1) the methods of evaluating students' clinical judgment and behaviors;

(2) performance on standardized clinical exit evaluation tools;

(3) the ability of graduates to transition to and assimilate in the registered nurse's role; and

(4) passage rates on the National Council Licensure Examination.

(e) The nursing resource section shall contract with an independent researcher to develop the research design and conduct the research. The independent researcher must be selected by a selection committee composed of:

(1) one representative elected by a majority of the nursing advisory committee under Section 104.0155, who is the chair of the selection committee;

(2) one representative designated by the Texas Health Care Policy Council;

(3) the presiding officer of the Texas Board of Nursing;

(4) one representative of the Texas Higher Education Coordinating Board, designated by the governor;

(5) one representative designated by the Texas Hospital Association;

(6) one representative designated by the Texas Association of Business;

(7) one representative designated by a clinical competency

assessment program that meets the requirements of Section 301.157(d-8), Occupations Code; and

(8) the nurse researcher member of the nursing advisory committee under Section 104.0155.

(f) The nursing resource section shall complete the study not later than June 30, 2014, and shall submit a report to the office of the governor, the Senate Committee on Health and Human Services, and the House Committee on Public Health. The report must include a research abstract prepared by the independent researcher.

(g) The nursing resource section may cooperate with the Texas Board of Nursing and the Texas Higher Education Coordinating Board in conducting the study.

(h) The nursing advisory committee formed under Section 104.0155 shall serve as the oversight committee for the study.

(i) Any data collected as part of the study that contains information identifying specific students, patients, or health care facilities is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless all identifying information is removed.

(j) In addition to funds appropriated by the legislature, the nursing resource section may solicit, receive, and spend grants, gifts, and donations from public or private sources for the purpose of conducting the study.

(k) If grants or other funds are available through the National Council of State Boards of Nursing that could be used to fund the study, the nursing resource section shall apply for the funds to the maximum amount available up to the estimated cost of the study. In making the application or accepting the funding, the nursing resource section may not relinquish any oversight responsibility for the study, including responsibility for designing and conducting the research or developing the findings.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 16, eff. June 19, 2009.

#### **CHAPTER 107A. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES**

Sec. 107A.001. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES. The executive commissioner of the Health and Human

Services Commission shall maintain a center for elimination of disproportionality and disparities in the Health and Human Services Commission to:

- (1) assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of minority health to develop health initiatives to decrease or eliminate health and health access disparities among racial, multicultural, disadvantaged, ethnic, and regional populations, including appropriate language services; and
- (2) maximize use of existing resources without duplicating existing efforts.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Sec. 107A.002. POWERS OF CENTER. The center may:

- (1) provide a central information and referral source, including a clearinghouse for health disparities information, and serve as the primary state resource in coordinating, planning, and advocating access to health care services to eliminate health disparities in this state;
- (2) coordinate conferences and other training opportunities to increase skills among state agencies and government staff in management and in the appreciation of cultural diversity;
- (3) pursue and administer grant funds for innovative projects for communities, groups, and individuals;
- (4) provide recommendations and training in improving minority recruitment in state agencies;
- (5) publicize information regarding health disparities and minority health issues through the use of the media;
- (6) network with existing minority organizations, community-based health groups, and statewide health coalitions;
- (7) solicit, receive, and spend grants, gifts, and donations from public and private sources; and
- (8) contract with public and private entities in the

performance of its responsibilities.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Sec. 107A.003. FUNDING. The Health and Human Services Commission may distribute to the center unobligated and unexpended appropriations to be used to carry out its powers.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

#### **CHAPTER 108. TEXAS HEALTH CARE INFORMATION COUNCIL**

Sec. 108.001. CREATION OF COUNCIL. The Texas Health Care Information Council shall administer this chapter and report to the governor, the legislature, and the public.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.002. DEFINITIONS. In this chapter:

(1) "Accurate and consistent data" means data that has been edited by the council and subject to provider validation and certification.

(2) "Board" means the Texas Board of Health.

(3) "Certification" means the process by which a provider confirms the accuracy and completeness of the data set required to produce the public use data file in accordance with council rule.

(4) "Charge" or "rate" means the amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances. The term does not

include copayment charges to enrollees in health benefit plans charged by providers paid by capitation or salary.

(4-a) "Commission" means the Health and Human Services Commission.

(5) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 873, Sec. 7, eff. September 1, 2011.

(6) "Data" means information collected under Section 108.0065 or 108.009 in the form initially received.

(7) "Department" means the Department of State Health Services.

(8) "Edit" means to use an electronic standardized process developed and implemented by council rule to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(8-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic;

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B); or

(H) a free-standing imaging center.

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital,

or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

- (A) patient demographic information;
- (B) patient length of stay;
- (C) mortality;
- (D) co-morbidity;
- (E) complications; and
- (F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the council.

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the council to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the council to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with council rule.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 1, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 802, Sec. 1, eff. Sept. 1, 1999; Acts



1999, 76th Leg., ch. 1460, Sec. 8.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.775, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.523, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL. (a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 3, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.02, eff. September 28, 2011.

Sec. 108.003. COUNCIL COMPOSITION; EXPENSES. (a) The council is composed of four ex officio state agency members and 15 members appointed by the governor in accordance with this section.

(b) The ex officio members of the council are:

(1) the commissioner of public health or the commissioner's designee;

(2) the commissioner of health and human services or the commissioner's designee;

(3) the commissioner of insurance or the commissioner's

designee; and

(4) the public insurance counsel or the counsel's designee.

(c) The governor shall appoint the following members of the council:

(1) three representatives of the business community, with at least one representing small businesses, who are purchasers of health care but who are not involved in the provision of health care or health insurance;

(2) two representatives from labor, one of whom is not directly involved with management of health care benefits;

(3) two representatives of consumers who are not professionally involved in the purchase, provision, administration, or review of health care or health care insurance;

(4) two representatives of hospitals;

(5) one representative of health maintenance organizations;

(6) three representatives of physicians who are involved in direct patient care; and

(7) two members who are not professionally involved in the purchase, provision, administration, or utilization review of health care or health care insurance and who have expertise in:

(A) health planning;

(B) health economics;

(C) provider quality assurance;

(D) information systems; or

(E) the reimbursement of medical education and research

costs.

(d) The chairman is appointed by and serves at the pleasure of the governor. Members annually shall elect a vice chairman.

(e) A majority of voting members constitutes a quorum for the transaction of any business. An act by the majority of the voting members present at any meeting at which there is a quorum is considered to be an act of the council.

(f) The council may appoint committees and may elect any officers subordinate to those provided for in Subsection (d).

(g) The council shall appoint technical advisory committees and shall consult with the appropriate technical advisory committee with respect to a rule before the rule is finally adopted by the council. The council is not required to consult with a technical advisory committee before adopting an emergency rule in accordance with Section 2001.034, Government Code. The council shall submit an

emergency rule adopted by the council to the appropriate advisory committee for review not later than the first advisory committee meeting that occurs after the rule is adopted. The council may consult with the appropriate technical advisory committee with respect to other formal action of the council. A technical advisory committee may consult with other professionals as necessary. Chapter 2110, Government Code, does not apply to an advisory committee appointed under this subsection. The technical advisory committees shall include:

(1) a technical advisory committee that includes, among other individuals, at least five practicing physicians licensed in this state to provide advice and recommendations to the council on the development and implementation of the methodology and the interpretation of a provider quality report and data under Section 108.010;

(2) a technical advisory committee composed of at least five practicing physicians licensed in this state who have been actively engaged in organized peer review at a hospital in this state to provide advice, recommendations, and peer review expertise to the council on:

(A) the use of peer review in the determination of quality inpatient care;

(B) the development and interpretation of data elements necessary to the determination of quality inpatient care; and

(C) the development and format of reports and information relating to provider quality;

(3) a technical advisory committee that includes providers and consumers to provide advice and recommendations to the council relating to education about the development and dissemination of provider reports and data;

(4) a technical advisory committee that includes representatives of consumers and each type of issuer of health benefit plans to assist the council in complying with Section 108.009(o); and

(5) a technical advisory committee composed of providers, consumers, and individuals who have expertise in hospital information systems, health information management, quality management, and security of confidential data.

(h) A member of the council may not receive compensation for service on the council. However, the member shall be reimbursed for

the member's actual and necessary meals, lodging, transportation, and incidental expenses if incurred while performing council business.

(i) A member of an advisory committee appointed by the council may not receive compensation or reimbursement of any expense incurred while serving on the committee.

(j) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of appointees. Additionally, in making the appointments to the council, the governor shall consider geographical representation.

(k) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 3, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 802, Sec. 2, eff. Sept. 1, 1999.

Sec. 108.004. MEETINGS. (a) The council, council committees, and technical advisory committees are subject to the open meetings law, Chapter 551, Government Code.

(b) The council shall meet as often as necessary, but not less often than quarterly, to perform its duties under this chapter.

(c) The council shall publish a notice of its meetings in the Texas Register.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 4, eff. Sept. 1, 1997.

Sec. 108.0045. OPEN RECORDS. Subject to the restrictions of this chapter, the council is subject to the open records law, Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 5, eff. Sept. 1, 1997.

Sec. 108.005. TERMS. (a) The terms of the agency members are concurrent with their terms of office. The appointed council members serve six-year staggered terms, with the terms of five members

expiring September 1 of each odd-numbered year.

(b) An appointed member may not serve more than two full consecutive terms.

(c) It is a ground for removal from the council if a member of the council:

(1) does not have at the time of appointment the qualifications required by Section 108.003;

(2) does not maintain during service the qualifications required by Section 108.003;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(4) fails to attend at least one-half of the regularly scheduled meetings that the member is eligible to attend during a calendar year.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.006. POWERS AND DUTIES OF COUNCIL. (a) The council shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The council shall:

(1) direct the collection, dissemination, and analysis of data under this chapter;

(2) contract with the department to collect the data under this chapter;

(3) adopt policies and rules necessary to carry out this chapter, including rules concerning data collection requirements;

(4) build on and not duplicate other data collection required by state or federal law, by an accreditation organization, or by board rule;

(5) working with appropriate agencies, review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation;

(6) assure that public use data is made available and accessible to interested persons;

(7) prescribe by rule the process for providers to submit

data consistent with Section 108.009;

(8) adopt by rule and implement a methodology to collect and disseminate data reflecting provider quality in accordance with Section 108.010;

(9) make reports to the legislature, the governor, and the public on:

(A) the charges and rate of change in the charges for health care services in this state;

(B) the effectiveness of the council in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(10) develop an annual work plan and establish priorities to accomplish its duties;

(11) provide consumer education on the interpretation and understanding of the public use or provider quality data before the data is disseminated to the public;

(12) work with the Health and Human Services Commission and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program;

(13) work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards; and

(14) develop and implement a health care information plan to be used by the department to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify

individuals and populations at risk.

(b) The council may:

(1) employ or contract with the department to employ an executive director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties;

(3) adopt rules clarifying which health care facilities must provide data under this chapter; and

(4) apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation.

(c) The council may not establish or recommend rates of payment for health care services.

(d) The council may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the department without the board's approval.

(e) In the collection of data, the council shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and the Joint Commission on Accreditation of Healthcare Organizations to reduce potential duplication or inconsistencies. The council may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The council shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by council rule is subject to annual review by the council with the assistance of the advisory committee under Section 108.003(g)(5). The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The council may also consider the costs to the council and providers associated with modifying the minimum data

set.

(h) In accordance with Section 108.0135, the council may release data collected under Section 108.009 that is not included in the public use data file minimum data set established under Subsection (f).

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 6, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 802, Sec. 3, eff. Sept. 1, 1999.

Sec. 108.0062. DRUG PURCHASING COOPERATIVES. (a) The council shall develop criteria for evaluating drug purchasing cooperatives that purchase drugs on behalf of consumers and create an evaluation form for consumers to evaluate drug purchasing cooperatives.

(b) The council shall distribute the evaluation forms to the department, local health departments, the Texas Department of Insurance, and the consumer protection division of the office of the attorney general.

(c) The council shall compile the information from completed evaluation forms and make the information available to the public.

Added by Acts 2001, 77th Leg., ch. 1256, Sec. 1, eff. Sept. 1, 2001.

Sec. 108.0065. POWERS AND DUTIES OF COUNCIL RELATING TO MEDICAID MANAGED CARE. (a) In this section:

(1) "Commission" means the Health and Human Services Commission.

(2) "Medicaid managed care organization" means a managed care organization, as defined by Section 533.001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 533, Government Code.

(b) The commission may direct the council to collect data under this chapter with respect to Medicaid managed care organizations. The council shall coordinate the collection of the data with the collection of data for health benefit plan providers, but with the approval of the commission may collect data in addition to the data otherwise required of health benefit plan providers.

(c) Each Medicaid managed care organization shall provide the data required by the council in the form required by the council or,



if the data is also being submitted to the commission or Medicaid operating agency, in the form required by the commission or Medicaid operating agency.

(d) Dissemination of data collected under this section is subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014, and 108.0141.

(e) The commission shall analyze the data collected in accordance with this section and shall use the data to:

(1) evaluate the effectiveness and efficiency of the Medicaid managed care system;

(2) determine the extent to which Medicaid managed care does or does not serve the needs of Medicaid recipients in this state; and

(3) assess the cost-effectiveness of the Medicaid managed care system in comparison to the fee-for-service system, considering any improvement in the quality of care provided.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(85), eff. June 17, 2011.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(85), eff. June 17, 2011.

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 8.03, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 14, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(85), eff. June 17, 2011.

Sec. 108.007. REVIEW POWERS. (a) The council, through the department and subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The council may enter into a memorandum of understanding with a state agency, including the division of the Health and Human Services Commission responsible for the state Medicaid program, or with a school of public health or another institution of higher education, to share data and expertise, to obtain data for the council, or to make data available to the council. An agreement entered into under this subsection must protect patient confidentiality.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.008. DUTIES OF DEPARTMENT. (a) The department, as the state health planning and development agency under Chapter 104, is responsible for the collection of data under Chapter 311.

(b) The department shall:

(1) contract with the council to collect data under this chapter;

(2) provide administrative assistance to the council;

(3) coordinate administrative responsibilities with the council to avoid unnecessary duplication of the collection of data and other duties;

(4) on request of the council, give the council access to data collected by the department;

(5) submit or assist in the council's budget request to the legislature; and

(6) work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards.

(c) The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the council without the council's approval.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 261, Sec. 7, eff. Sept. 1, 1997.

Sec. 108.0081. MEMORANDUM OF UNDERSTANDING. The council and

the department shall enter into a memorandum of understanding to implement the department's duties under Section 108.008(b). The memorandum of understanding must address:

- (1) payroll and travel reimbursement services;
- (2) purchasing services;
- (3) personnel services;
- (4) budget management services;
- (5) computer support and maintenance services;
- (6) meeting coordination services;
- (7) any other administrative support or other services to be provided by the department for the council; and
- (8) the manner in which the council will reimburse the department for the cost of services provided by the department for the council.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.

Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney general shall furnish the council with advice and legal assistance that may be required to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The council may collect, and, except as provided by Subsections (c) and (d), providers shall submit to the council or another entity as determined by the council, all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The council shall adopt rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule adopted by the council that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is

adopted.

(c) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 7, Sec. 7.07(b), eff. September 1, 2014.

(d) The council may not collect data from individual physicians or from an entity that is composed entirely of physicians and that is a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), a limited liability partnership organized under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), or a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility under this chapter.

(e) The council shall establish the department as the single collection point for receipt of data from providers. With the approval of the council and the board, the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.

(f) The council may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The council shall coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the council a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b, 254c, or 256 shall submit annually to the council a copy of the Bureau of Common Reporting Requirements data report developed by the United States Public Health Service.

(h) The department shall coordinate data collection with the data submission formats used by hospitals and other providers. The department shall accept data in the format developed by the American National Standards Institute or its successor or other nationally accepted standardized forms that hospitals and other providers use

for other complementary purposes.

(i) The council shall develop by rule reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

(j) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(k) The council shall collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers. The council shall prioritize data collection efforts on inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing radiology centers.

(l) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(m) To the extent feasible, the council shall obtain from public records the information that is available from those records.

(n) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(o) A provider of a health benefit plan shall annually submit to the council aggregate data by service area required by the Health Plan Employer Data Information Set (HEDIS) as operated by the National Committee for Quality Assurance. The council may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the Health Plan Employer Data Information Set does not generally apply to a health benefit plan, the council shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Section 108.011 but is not subject to Section 108.010.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 261, Sec. 9, 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. [1731](#)), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. [156](#)), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.03, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER QUALITY DATA. (a) Subject to Section 108.009, the council shall collect data reflecting provider quality based on a methodology and review process established through the council's rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

(b) The council shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.

(c) The council shall test the methodology by collecting provider quality data for one year, subject to Section 108.009. The council may test using pilot methodologies. After collecting provider quality data for one year, the council shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The council shall verify the accuracy of the data during this review and revision process. After the review and revision process, provider quality data for subsequent reports shall be published and made available to the public, on a time schedule the council considers appropriate.

(d) If the council determines that provider quality data to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the council is not required to publish the data or reports based in whole or in part on the data. This subsection does not affect the release of public use data in accordance with Section 108.011 or the release of information submitted under Section 108.009(o).

(e) The council shall adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The council shall make the comments available to the public at the office of the council and in an electronic form accessible through the Internet. The comments shall be attached to any public release of provider quality data. Providers shall submit the comments to the council to be attached to the public release of provider quality data in the same format as the

provider quality data that is to be released.

(f) The methodology adopted by the council for measuring quality shall include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality data shall comply with Sections 108.011(e) and (f).

(h) A provider quality data report may not identify an individual physician by name, but must identify the physician by the uniform physician identifier designated by the council under Section 108.011(c).

(i) The council shall release provider quality data in an aggregate form without uniform physician identifiers when:

(1) the data relates to providers described by Section 108.0025(1); or

(2) the cell size of the data is below the minimum size established by council rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 5, eff. Sept. 1, 1999.

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND COUNCIL PUBLICATIONS. (a) The council shall promptly provide public use data and data collected in accordance with Section 108.009(o) to those requesting it. The public use data does not include provider quality data prescribed by Section 108.010 or confidential data prescribed by Section 108.013.

(b) Subject to the restrictions on access to council data prescribed by Sections 108.010 and 108.013, and using the public use data and other data, records, and matters of record available to it, the council shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The council must issue the reports at least annually.

(c) Subject to the restrictions on access to council data prescribed by Sections 108.010 and 108.013, the council shall use public use data to prepare and issue reports that provide information

relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians may not be identified by name, but shall be identified by uniform physician identifiers. The council by rule shall designate the characters to be used as uniform physician identifiers.

(c-1) The council shall use public use data to prepare and issue reports that provide information for review and analysis by the Health and Human Services Commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The council shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public.

(e) If public use data is requested from the council about a specific provider, the council shall notify the provider about the release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the council shall include a reasonable review and comment period for the affected providers before public release of the report.

(g) The council shall adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The council shall make the comments available to the public and the office of the council and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the council to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Tapes containing public use data and provider quality reports that are released to the public must include general consumer



education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The council shall release public use data in an aggregate form without uniform physician identifiers when:

(1) the data relates to providers described by Section 108.0025(1); or

(2) the cell size of the data is below the minimum size established by council rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 4, eff. September 1, 2005.

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The council shall provide a means for computer-to-computer access to the public use data. All reports shall maintain patient confidentiality as provided by Section 108.013.

(b) The council may charge a person requesting public use or provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the council in collecting and providing the data and shall be set at a level that will raise revenue sufficient for the operation of the council. The council may not charge a fee for providing public use data to another state agency.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997.

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the department under this chapter shall be used by the department and commission for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner rule, the department shall make determinations

on requests for information in favor of access.

(b) The executive commissioner by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department may not release and a person or entity may not gain access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;

(2) that could reasonably be expected to reveal the identity of a physician;

(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or

(5) submitted to the department in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all data collected and used by the department under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037;

(2) Section 81.103; and

(3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) Unless specifically authorized by this chapter, the department may not release data elements in a manner that will reveal the identity of a patient. The department may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law and except as provided by this section, the department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner shall by rule develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

- (1) Section 81.103;
- (2) Sections 108.010(g) and (h);
- (3) Sections 108.011(e) and (f);
- (4) Section 311.037; and
- (5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.776, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.04, eff. September 28, 2011.

Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA. The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.06, eff. September 28, 2011.

Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The department shall establish an institutional review board to review and approve requests for access to data not contained in public use data. The members of the institutional review board must have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board in determining whether to approve a request for information, the executive commissioner shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed by the department.

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 802, Sec. 8, eff. Sept. 1, 1999.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.05, eff. September 28, 2011.

Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or negligently releases data in violation of this chapter is liable for a civil penalty of not more than \$10,000.

(b) A person who fails to supply available data under Sections

108.009 and 108.010 is liable for a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation.

(c) The attorney general, at the request of the council, shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund to the credit of the health care information account.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 802, Sec. 9, eff. Sept. 1, 1999.

Sec. 108.0141. CRIMINAL PENALTY. (a) A person who knowingly accesses data in violation of this chapter or who with criminal negligence releases data in violation of this chapter commits an offense.

(b) An offense under this section is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 13, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 802, Sec. 10, eff. Sept. 1, 1999.

Sec. 108.015. CONFLICT OF INTEREST. The council may not accept a donation from a person required to provide data under this chapter or from a person or business entity who provides goods or services to the council for compensation.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.016. SUNSET REVIEW. Unless continued in existence in accordance with Chapter 325, Government Code (Texas Sunset Act), after the review required by Section 11.003(b), this chapter expires September 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 919 (H.B. [1394](#)), Sec. 2, eff. June 14, 2013.

**CHAPTER 112. BORDER HEALTH FOUNDATION**

Sec. 112.001. DEFINITIONS. In this chapter:

- (1) "Board of directors" means the board of directors of the Border Health Foundation.
- (2) "Foundation" means the Border Health Foundation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.002. CREATION OF FOUNDATION. (a) The department shall establish the Border Health Foundation as a nonprofit corporation that complies with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except as otherwise provided by this chapter, and qualifies as an organization exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) The department shall ensure that the foundation operates independently of any state agency or political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall raise money from other foundations, governmental entities, and other sources to finance health programs in areas adjacent to the border with the United Mexican States.

(b) The foundation shall:

- (1) identify and seek potential partners in the private sector that will afford this state the opportunity to maintain or increase the existing levels of financing of health programs and activities;
- (2) engage in outreach efforts to make the existence of the office known to potential partners throughout this area; and
- (3) perform any other function necessary to carry out the purposes of this section.

(c) The department shall review programs from all agencies under its control to determine which projects should be available to receive money under Subsection (a).

(d) The foundation has the powers necessary and convenient to carry out its duties.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1215 (H.B. 925), Sec. 6, eff. September 1, 2005.

Sec. 112.004. ADMINISTRATION. (a) The foundation is governed by a board of five directors. Vacancies shall be filled by a vote of the board of directors of the foundation from individuals recommended by the department.

(b) Members of the board of directors serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring every two years.

(c) Appointments to the board of directors shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The board of directors shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3) of that code, as amended.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1215 (H.B. 925), Sec. 7, eff. September 1, 2005.

Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board of directors and may not be a foundation employee employed in a "bona fide executive,

administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board of directors or act as the general counsel to the board of directors or the foundation if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the foundation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board of directors that a member:

(1) is ineligible for membership under Section 112.005;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board of directors.

(b) The validity of an action of the board of directors is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) The foundation in its articles or bylaws shall establish the manner in which a board member may be removed under this section and may establish other grounds for removal of a member.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.007. VACANCY. A vacancy on the board of directors shall be filled for the remainder of the unexpired term in the same



manner as provided in Section 112.004(a).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.008. OFFICERS. The board of directors shall elect from among its members a presiding officer, an assistant presiding officer, and other necessary officers. The presiding officer and assistant presiding officer serve for a period of one year and may be reelected.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.009. MEETINGS. The board of directors may meet as often as necessary, but shall meet at least twice a year.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.010. TAX EXEMPTION. All income, property, and other assets of the foundation are exempt from taxation by this state and political subdivisions of this state.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation and the department shall enter into a memorandum of understanding that:

- (1) requires the board of directors and staff of the foundation to report to the commissioner and department;
- (2) allows the department to provide staff functions to the foundation; and
- (3) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1,

2003.

Sec. 112.012. FUNDING. (a) The department, another agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, or a political subdivision of this state may contract with the foundation to finance, on behalf of the department, agency, or political subdivision, health programs described by Section 112.003.

(b) The foundation may apply for and accept funds from the federal government or any other public or private entity. The foundation or any member of the foundation may also solicit and accept pledges, gifts, and endowments from private sources on the foundation's behalf. The foundation may only accept a pledge, gift, or endowment solicited under this section that is consistent with the purposes of the foundation.

(c) The board of directors of the foundation shall manage and approve disbursements of funds, pledges, gifts, and endowments that are the property of the foundation.

(d) The board of directors of the foundation shall manage any capital improvements constructed, owned, or leased by the foundation and any real property acquired by the foundation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.013. RECORDS. (a) The foundation shall maintain financial records and reports independently from those of the department.

(b) The foundation shall comply with all filing requirements of the secretary of state and the Internal Revenue Service.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

Sec. 112.014. REPORT TO DEPARTMENT. Not later than the 60th day after the last day of the fiscal year, the foundation shall submit to the department a report itemizing all income and expenditures and describing all activities of the foundation during

the preceding fiscal year.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.54(a), eff. Sept. 1, 2003.

#### **CHAPTER 114. INTERAGENCY OBESITY COUNCIL**

Sec. 114.001. DEFINITION. In this chapter, "council" means the interagency obesity council created by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 509 (S.B. 556), Sec. 1, eff. June 16, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.002. INTERAGENCY OBESITY COUNCIL. The council is composed of the commissioner of agriculture, the commissioner of state health services, and the commissioner of education, or a staff member designated by each of those commissioners.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.003. CONTRACTS FOR ASSISTANCE. The council may contract with a private or public university to assist in gathering information under this chapter.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.004. GIFTS AND GRANTS. An agency represented on the council may accept gifts and grants on behalf of the council.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff.

September 1, 2009.

Sec. 114.005. REVIEW OF AGENCY PROGRAMS. The council shall review the status of the programs of the Department of Agriculture, the Department of State Health Services, and the Texas Education Agency that promote better health and nutrition and prevent obesity among children and adults in this state.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.006. EVIDENCE-BASED PUBLIC HEALTH AWARENESS PLAN. (a) The council shall create an evidence-based public health awareness plan. In creating the plan, the council shall explore past successful public health awareness efforts.

(b) The plan must include:

(1) a cost estimate that accounts for continuing implementation of the plan;

(2) recommendations on reaching populations that would most benefit from increased public health awareness; and

(3) recommendations on encouraging employers to participate in wellness programs for employees.

(c) The council shall solicit input on the plan from the private sector.

(d) The council shall provide to the Department of State Health Services information on effective strategies for employers to use to promote workplace wellness, including information on the projected costs and benefits. The Department of State Health Services shall post the information on its Internet website.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.007. REPORTS. (a) Not later than January 15 of each odd-numbered year, the council shall submit a report to the governor, the lieutenant governor, and the speaker of the house of

representatives on the activities of the council under Sections 114.005 and 114.006 during the preceding two calendar years.

(b) A report submitted by the council under Subsection (a) must include the following information regarding discussions of agency programs under Section 114.005:

(1) a list of the programs within each agency represented on the council that are designed to promote better health and nutrition;

(2) an assessment of the steps taken by each program during the preceding two calendar years;

(3) a report of the progress made by taking these steps in reaching each program's goals;

(4) the areas of improvement that are needed in each program; and

(5) recommendations for future goals or legislation.

(c) A report submitted by the council under Subsection (a) must include the following information regarding the evidence-based public health awareness plan under Section 114.006:

(1) a cost estimate for an ongoing program to implement the plan;

(2) projected benefits of the program;

(3) a summary of the information provided to the Department of State Health Services for its Internet website; and

(4) recommendations for goals and future legislation.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

Sec. 114.008. MEETINGS. (a) The council shall meet at least once each year to perform its duties under Sections 114.005 and 114.006.

(b) A meeting held under this chapter is not subject to the provisions of the open meetings law, Chapter 551, Government Code.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1212 (S.B. 870), Sec. 1, eff. September 1, 2009.

**CHAPTER 115. TASK FORCE FOR CHILDREN WITH SPECIAL NEEDS**

Sec. 115.001. DEFINITIONS. In this chapter:

(1) "Children with special needs" means children younger than 22 years of age diagnosed with a chronic illness, intellectual or other developmental disability, or serious mental illness.

(2) "Commission" means the Health and Human Services Commission.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Task force" means the Interagency Task Force for Children with Special Needs established under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.002. TASK FORCE FOR CHILDREN WITH SPECIAL NEEDS. The governor, or the governor's designee, shall oversee the task force created and administered by the commission to improve the coordination, quality, and efficiency of services for children with special needs.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.003. DUTIES. The task force shall:

(1) not later than September 1, 2010, coordinate with federal agencies to compile a list of opportunities to increase flexible funding for services for children with special needs, including alternative funding sources and service delivery options;

(2) conduct a review of state agency policies and procedures related to service delivery for children with special needs;

(3) perform a needs assessment, including public hearings to identify service delivery gaps, system entry points, and service obstacles; and

(4) develop a five-year plan to improve the coordination, quality, and efficiency of services for children with special needs under Section 115.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.004. TASK FORCE PLAN. (a) In developing the five-year plan under this chapter, the task force shall:

(1) identify the party responsible for each action set forth in the plan and set deadlines for implementation of each recommendation;

(2) create benchmarks to measure progress toward goals and objectives;

(3) consult with the Legislative Budget Board to coordinate relevant cost studies and account for long-term savings of short-term child investments;

(4) consult with personnel from other states to identify best practices;

(5) consult with the state demographer and relevant federal agencies to account for future demographic trends;

(6) consult with pediatric specialists and other health care providers to determine best medical practices;

(7) coordinate with mental health and developmental disability advocates; and

(8) develop a timeline for plan implementation.

(b) The plan created under this chapter must provide recommendations to:

(1) maximize the use of federal funds available to this state for the purposes described by Section 115.002;

(2) reduce the number of families who experience crisis due to insufficient and ineffective interventions or services or lack of coordination and planning of interventions or services;

(3) improve families' ability to navigate the system through improved coordination between service providers and increased outreach;

(4) remove barriers to local coordination of services and

supports;

(5) evaluate the feasibility of creating an interagency legally authorized representative program to provide support services for children with special needs;

(6) improve early detection and intervention services;

(7) increase the number of community-based options for children with special needs;

(8) improve accountability for each agency represented on the task force and other service providers;

(9) reduce existing fragmentation of service delivery to reflect best practices and eliminate ineffective interventions;

(10) reduce service gaps and overlap;

(11) improve data management;

(12) prevent unnecessary parental relinquishment of custody;

(13) create a core set of quality measures to determine quality of care and improvements to quality of life; and

(14) improve availability of high-quality community-based acute and long-term care services and supports.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.005. MEMORANDUM OF UNDERSTANDING. The governor's office and each agency represented on the task force shall enter into a memorandum of understanding to implement the task force's duties under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.006. REPORT. (a) The task force shall submit a biennial report on the progress of each agency represented on the task force in accomplishing the goals described by Section 115.002 to the governor, lieutenant governor, and speaker of the house of



representatives.

(b) The report must include:

(1) stakeholder input, including testimony from parents in each health and human services district;

(2) progress toward meeting each goal outlined in the plan under Section 115.004;

(3) current barriers that prevent accomplishing each goal listed in Subdivision (2);

(4) additional resource needs;

(5) current resources that could be redirected for more efficient and effective use;

(6) amendments to the plan under this chapter;

(7) recommendations and proposed legislation to help fulfill the goals of this chapter; and

(8) feasibility statements on related recommendations.

(c) The task force shall publish the report on the commission's website.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.007. COMPOSITION. (a) The task force consists of:

(1) the commissioner, the executive director or director, or a deputy or assistant commissioner of:

(A) the commission, designated by the executive commissioner;

(B) the Department of Aging and Disability Services, designated by the commissioner of that agency;

(C) the Department of Assistive and Rehabilitative Services, designated by the commissioner of that agency;

(D) the division of early childhood intervention services, designated by the commissioner of the Department of Assistive and Rehabilitative Services;

(E) the Department of Family and Protective Services, designated by the commissioner of that agency;

(F) the Department of State Health Services, designated by the commissioner of that agency;

(G) the Texas Education Agency, designated by the commissioner of that agency;

(H) the Texas Youth Commission, designated by the executive commissioner of that agency;

(I) the Texas Juvenile Probation Commission, designated by the executive director of that agency; and

(J) the Texas Correctional Office on Offenders with Medical or Mental Impairments, designated by the director of that office; and

(2) eight nonvoting members who are:

(A) a representative of a local mental health authority or a local mental retardation authority, appointed by the governor;

(B) two members of the house of representatives, appointed by the speaker of the house of representatives;

(C) two senators, appointed by the lieutenant governor; and

(D) three parents or consumer advocates, one each appointed by the commission, the Texas Education Agency, and the Texas Youth Commission.

(b) The members of the task force appointed under Subsection (a)(2)(D) may serve a five-year term or may elect to serve for a shorter period.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.008. MEETINGS. (a) The task force shall meet at least once each quarter.

(b) The task force shall provide an opportunity for statewide public participation in at least two meetings in each calendar year.

(c) All meetings of the task force shall be conducted in accordance with Chapter 551, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.009. INTERAGENCY COORDINATOR; STAFF. (a) The governor shall appoint an interagency coordinator from the commission as the presiding officer of the task force.

(b) The interagency coordinator shall hire a full-time director and administrative assistant to support the duties and functions of the task force.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.010. TASK FORCE DIRECTOR. The task force director hired by the interagency coordinator under Section 115.009 shall:

- (1) prepare on behalf of the task force the plan and reports required under this chapter;
- (2) work with each task force representative to schedule meetings and deadlines relevant to the representative's agency; and
- (3) work with the interagency coordinator to assign subcommittee leadership positions under Section 115.011.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.011. SUBCOMMITTEES. (a) The interagency coordinator, assisted by the task force director, shall establish subcommittees to address:

- (1) early childhood detection and intervention;
- (2) education;
- (3) health care;
- (4) transitioning youth;
- (5) crisis prevention and intervention;
- (6) juvenile justice;
- (7) long-term, community-based services and supports; and
- (8) mental health.

(b) Each subcommittee shall include at least one task force member to serve as chair. Consistent with the purpose of each

subcommittee, members shall consult with relevant subject matter experts, relevant advocacy organizations, staff from related agencies, and parents or consumers who have used related services.

(c) Each subcommittee shall report the subcommittee's findings and related recommendations at a task force meeting at least once each year. On a biennial basis, the subcommittee shall provide a written report with findings and recommendations not less than two months before the scheduled release of the task force report under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

Sec. 115.012. SUNSET PROVISION. The Interagency Task Force for Children With Special Needs is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the task force is abolished and this chapter expires September 1, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 835 (S.B. 1824), Sec. 1, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1133 (H.B. 2196), Sec. 2, eff. September 1, 2009.

#### **CHAPTER 116. EARLY CHILDHOOD HEALTH AND NUTRITION INTERAGENCY COUNCIL**

Sec. 116.001. DEFINITION. In this chapter, "council" means the Early Childhood Health and Nutrition Interagency Council.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.001 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.002. REVIEW BY SUNSET ADVISORY COMMISSION. The Sunset

Advisory Commission shall review the Early Childhood Health and Nutrition Interagency Council as part of its periodic review of the Department of Agriculture under Chapter 325, Government Code (Texas Sunset Act).

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.002 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 6.01, eff. June 14, 2013.

Sec. 116.003. COMPOSITION OF COUNCIL; PRESIDING OFFICER. (a) The Department of Agriculture shall establish the Early Childhood Health and Nutrition Interagency Council. The council is composed of eight members as follows:

(1) a representative of the Health and Human Services Commission who is involved in the coordination of children's programs, appointed by the executive commissioner of the Health and Human Services Commission;

(2) a representative of the Department of State Health Services' health promotion and chronic disease prevention programs, appointed by the commissioner of state health services;

(3) a representative of the Department of State Health Services' Special Supplemental Nutrition Program for Women, Infants and Children, appointed by the commissioner of state health services;

(4) a representative of the Texas Workforce Commission, appointed by the executive director of the Texas Workforce Commission;

(5) a representative of the Department of Agriculture, appointed by the commissioner of agriculture;

(6) a representative of the Texas Education Agency's school health programs, appointed by the commissioner of education;

(7) a representative of the Department of Family and Protective Services' Child Care Licensing Division, appointed by the commissioner of the Department of Family and Protective Services; and

(8) a representative of the Texas AgriLife Extension

Service, appointed by the director of the Texas AgriLife Extension Service.

(b) The representative appointed under Subsection (a)(5) shall serve as the presiding officer of the council.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.003 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.004. DEPARTMENT DUTIES. The Department of Agriculture shall provide staff and resources as necessary for the operation of the council.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.005. TERMS; VACANCY. (a) Members of the council serve two-year terms, with the terms expiring February 1 of each odd-numbered year.

(b) A member may be reappointed.

(c) A vacancy on the council shall be filled for the remainder of the unexpired term in the same manner as provided by Section 116.003(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.005 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(4), eff. September 1, 2011.

Sec. 116.006. MEETINGS. (a) The council shall meet in person three times each year and may hold meetings by conference call as necessary. The council shall invite stakeholders to participate in at least two council meetings each year and provide an opportunity for submission of oral or written testimony. The council at a minimum shall invite:

(1) one individual with expertise in early childhood nutrition and physical activity, such as a registered dietician, physical therapist, or physical education specialist;

(2) one staff member or manager of a child-care facility;

(3) one staff member or manager of a child-care facility operated in a private residence;

(4) two individuals with medical experience in early childhood health, such as a family practice physician, registered nurse, nurse practitioner, pediatrician, or child health consultant;

(5) one representative from a nonprofit organization that provides family or wellness services; and

(6) one representative from an agency or organization with expertise in community health education and outreach, such as a local health department, public relations or marketing firm, or university.

(b) Section 551.125, Government Code, applies to a meeting held by conference call under this section, except that Section 551.125(b), Government Code, does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.006 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.007. COUNCIL POWERS AND DUTIES. (a) The council shall review current research to assess:

(1) the health of children under the age of six in this state compared to the health of similar children in other states;

(2) the significance of nutrition and physical activity in the development of children under the age of six; and

(3) the existence of nutrition and physical activity requirements and practices in early childhood care settings.

(b) The council shall review the status of the programs

administered by each agency represented on the council that promote healthy nutrition and physical activity in early childhood care settings.

(c) The council shall identify existing state and federal funding sources available for the promotion of health and nutrition in early childhood care settings.

(d) The council shall consult with key stakeholders to identify:

(1) barriers to improving nutrition and physical activity standards in early childhood care settings; and

(2) evidence-based best practices for improving early childhood health through nutrition and physical activity.

(e) The Department of Agriculture for the council may contract with a university to study and report on best practices and obstacles for addressing early childhood health through nutrition and physical activity.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.007 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.008. COMPENSATION; REIMBURSEMENT. (a) A member of the council may not receive compensation for service on the council.

(b) A member may be reimbursed for the member's actual and necessary expenses for meals, lodging, transportation, and incidental expenses incurred while performing council business, subject to any applicable limitation on reimbursement prescribed by the General Appropriations Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.008 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.009. EARLY CHILDHOOD NUTRITION AND PHYSICAL ACTIVITY PLAN. (a) The council shall develop an early childhood nutrition



and physical activity plan with a recommended timeline for implementation over a six-year period.

(b) The six-year plan must account for stakeholder recommendations, address the financing, staffing, and training required to implement the plan, and include methods to:

(1) increase fruit and vegetable consumption among children under the age of six;

(2) increase daily structured and unstructured physical activity in early childhood care settings;

(3) increase awareness among parents of the benefits of breast-feeding, healthy eating, and appropriate activity in children under the age of six;

(4) facilitate the consumption of breast milk in early childhood care settings;

(5) decrease malnutrition and undernourishment among children under the age of six; and

(6) engage existing community and state resources and service providers to educate and increase the awareness of parents and caretakers regarding the need for proper nutrition.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.009 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.010. GIFTS, GRANTS, AND DONATIONS. The Department of Agriculture for the council may accept a gift, grant, or donation from any source to carry out the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.010 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.011. REPORT. The council shall submit to both houses of the legislature and the governor on or before November 1 of each even-numbered year a written report on:

- (1) the actions taken in furtherance of the six-year plan;
- (2) the areas that need improvement in implementing the six-year plan;
- (3) any change to the six-year plan; and
- (4) the programs and practices that address nutrition and physical activity in early childhood settings in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.011 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

Sec. 116.012. RULES. The commissioner of agriculture may adopt rules necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 733 (S.B. 395), Sec. 1, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 115.012 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(25), eff. September 1, 2011.

## **CHAPTER 117. PUBLIC HEALTH FUNDING AND POLICY COMMITTEE**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 117.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Committee" means the Public Health Funding and Policy Committee established under Section 117.051.
- (3) "Department" means the Department of State Health Services.
- (4) "Local health department" means a local health department established under Subchapter D, Chapter 121.
- (5) "Local health entity" means a local health unit, a local health department, or a public health district.
- (6) "Local health unit" has the meaning assigned by Section 121.004.
- (7) "Public health district" means a health district established under Subchapter E, Chapter 121.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.002. APPLICATION OF SUNSET ACT. The Public Health Funding and Policy Committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2023.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.003. ADMINISTRATIVE COSTS. To the extent that a term or condition of a federal grant or federal law does not limit the use of federal grant money, the department or a local health entity may use federal grant money to pay the administrative costs incurred by the department or the local health entity in implementing and administering this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. ESTABLISHMENT OF COMMITTEE**

Sec. 117.051. ESTABLISHMENT OF COMMITTEE. The commissioner shall establish the Public Health Funding and Policy Committee within the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.052. APPOINTMENT OF MEMBERS. (a) The commissioner shall appoint nine members to the committee as follows:

- (1) two regional health directors, each of whom is serving as a health authority in a municipality or county;
- (2) one local health entity representative of a municipality or county with a population of 50,000 or less;
- (3) one local health entity representative from a

municipality or county with a population greater than 50,000 but less than 250,000;

(4) one local health entity representative from a municipality or county with a population of at least 250,000;

(5) two local health entity representatives, each of whom serves in a municipality or county as the health authority; and

(6) two representatives of schools of public health at institutions of higher education in this state.

(b) In making appointments under Subsections (a)(2), (3), (4), and (5), the commissioner shall select the members from nominations by associations representing local health departments, county governments, and municipal governments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.053. TERMS; VACANCY. (a) Committee members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs on the committee, a person shall be appointed to fill the vacancy for the unexpired term in the same manner as the original appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.054. COMPENSATION AND REIMBURSEMENT. A committee member is not entitled to compensation for service on the committee and is not entitled to reimbursement for any travel expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.055. PRESIDING OFFICER. The presiding officer is elected by a majority vote of all the committee members.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.056. MEETINGS. (a) The committee shall meet at least quarterly or more frequently at the call of the presiding officer.

(b) To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Sections 551.125(c), (d), (e), and (f), Government Code. Sections 551.125(b) and 551.127, Government Code, do not apply to the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER C. DUTIES OF COMMITTEE**

Sec. 117.101. GENERAL DUTIES OF COMMITTEE. (a) The committee shall:

- (1) define the core public health services a local health entity should provide in a county or municipality;
- (2) evaluate public health in this state and identify initiatives for areas that need improvement;
- (3) identify all funding sources available for use by local health entities to perform core public health functions;
- (4) establish public health policy priorities for this state; and
- (5) at least annually, make formal recommendations to the department regarding:
  - (A) the use and allocation of funds available exclusively to local health entities to perform core public health functions;
  - (B) ways to improve the overall public health of citizens in this state;
  - (C) methods for transitioning from a contractual relationship between the department and the local health entities to a cooperative-agreement relationship between the department and the local health entities; and
  - (D) methods for fostering a continuous collaborative relationship between the department and the local health entities.

(b) Recommendations made under Subsection (a)(5)(A) must be in accordance with:

- (1) prevailing epidemiological evidence, variations in geographic and population needs, best practices, and evidence-based interventions related to the populations to be served;
- (2) state and federal law; and
- (3) federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.102. PUBLIC TESTIMONY. (a) At least semiannually, the committee shall:

- (1) invite public health stakeholders, including federal public health officials, county and municipal governments, schools of public health at institutions of higher education, and federally qualified health centers, to give oral or written testimony to the committee; and
- (2) provide opportunities for the general public to give oral or written testimony to the committee.

(b) The committee shall consult with public health stakeholders to carry out the general duties of the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.103. ANNUAL REPORT. Beginning in 2012, not later than November 30 of each year the committee shall file a report on the implementation of this chapter with the governor, the lieutenant governor, and the speaker of the house of representatives.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.104. SUPPORT STAFF. Using existing personnel and videoconferencing equipment, local health entities or their designees may assist the committee in the performance of its duties under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.105. OPEN MEETINGS ACT. Except as provided by Section 117.056, the committee is subject to Chapter 551, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT**

Sec. 117.151. ANNUAL REPORT. (a) Beginning in 2012, not later than November 30 of each year the department shall file an annual report with the governor, the lieutenant governor, and the speaker of the house of representatives detailing:

(1) the implementation of the committee's recommendations described in Section 117.101(a)(5); and

(2) an explanation of the department's reasons for not implementing a recommendation.

(b) A decision by the department not to implement a recommendation of the committee must be based on:

(1) a lack of available funding;

(2) evidence that the recommendation is not in accordance with prevailing epidemiological evidence, variations in geographic and population needs, best practices, or evidence-based interventions related to the populations to be served;

(3) evidence that implementing the recommendation would violate state or federal law; or

(4) evidence that the recommendation would violate federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.152. COLLABORATIVE RELATIONSHIP WITH LOCAL HEALTH ENTITIES. The department shall establish a continuous collaborative relationship with local health departments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1,

eff. September 1, 2011.

**SUBTITLE F. LOCAL REGULATION OF PUBLIC HEALTH**  
**CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 121.001. SHORT TITLE. This chapter may be cited as the Local Public Health Reorganization Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.002. DEFINITIONS. In this chapter:

- (1) "Essential public health services" means services to:
- (A) monitor the health status of individuals in the community to identify community health problems;
  - (B) diagnose and investigate community health problems and community health hazards;
  - (C) inform, educate, and empower the community with respect to health issues;
  - (D) mobilize community partnerships in identifying and solving community health problems;
  - (E) develop policies and plans that support individual and community efforts to improve health;
  - (F) enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;
  - (G) link individuals who have a need for community and personal health services to appropriate community and private providers;
  - (H) ensure a competent workforce for the provision of essential public health services;
  - (I) research new insights and innovative solutions to community health problems; and
  - (J) evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.
- (2) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 1, eff. June 19, 1999.



Sec. 121.003. POWERS OF MUNICIPALITIES AND COUNTIES. (a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(c) The commissioners court of a county may grant authority under this subsection to a county employee who is trained by a health authority appointed by the county under Section 121.021, by a local health department established under Section 121.031, or by a public health district established under Section 121.041 and who is not a peace officer. The court may grant to the employee the power to issue a citation in an unincorporated area of the county to enforce any law or order of the commissioners court that is reasonably necessary to protect the public health. A citation issued under this subsection must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court. If a person who receives a citation under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 562, Sec. 1, eff. Aug. 26, 1991.

Sec. 121.0035. REGULATION OF MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS IN CERTAIN POPULOUS AREAS. (a) In this section, "mobile food unit" and "roadside food vendor" have the meanings assigned under Section 437.001.

(b) A municipality with a population of 1.5 million or more and a county with a population of 3.4 million or more shall enforce state law and rules adopted under state law concerning mobile food units and roadside food vendors in the same manner that the county or municipality enforces other health and safety regulations relating to

food service.

Added by Acts 2005, 79th Leg., Ch. 1288 (H.B. 2507), Sec. 1, eff. September 1, 2005.

Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a division of municipal or county government that provides public health services but does not provide each service required of a local health department under Section 121.032(a) or of a public health district under Section 121.043(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.005. STATE AND LOCAL AFFILIATION; CONTRACTS. (a) A local health unit, local health department, or public health district may become affiliated with the department to facilitate the exchange of information and the coordination of public health services.

(b) To be affiliated with the department, a local health unit, local health department, or public health district must annually provide to the department information relating to:

- (1) services provided;
- (2) staffing patterns; and
- (3) funding sources and budget.

(c) The department may contract with a local health unit, local health department, or public health district for the provision of public health services.

(d) The board may adopt rules necessary to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.006. PUBLIC HEALTH SERVICES FEES; STATE SUPPORT. (a) The governing body of a municipality, the commissioners court of a county, or the administrative board of a public health district may adopt ordinances or rules to charge fees for public health services.

(b) A municipality, county, or public health district may not deny public health services to an individual because of inability to pay for the services. A municipality, county, or public health

district shall provide for the reduction or waiver of a fee for an individual who cannot pay for services in whole or in part.

(c) The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and standards adopted under that Act control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

(c-1) A fee for a public health service charged in the jurisdiction of a public health district may be uniform throughout the district regardless of which governmental entity member of the district charges the fee. The fee may be set at an amount up to the highest amount charged by any governmental entity member of the district.

(d) In this section, "public health services" means:

- (1) personal health promotion and maintenance services;
- (2) infectious disease control and prevention services;
- (3) environmental and consumer health programs;
- (4) public health education and information services;
- (5) laboratory services; and
- (6) administrative services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 810 (S.B. 1380), Sec. 1, eff. September 1, 2007.

Sec. 121.0065. GRANTS FOR ESSENTIAL PUBLIC HEALTH SERVICES.

(a) Subject to the availability of funds, the department shall administer a program under which appropriated money may be granted to counties, municipalities, public health districts, and other political subdivisions for use by the counties, municipalities, public health districts, and other political subdivisions to provide or pay for essential public health services.

(b) The grants authorized by Subsection (a) shall be distributed equally between urban and rural areas of the state.

(c) The board shall adopt rules governing:

- (1) the allocation formula for grants awarded under this section;
- (2) the manner in which a municipality, county, public

health district, or other political subdivision applies for a grant;

(3) the procedures for awarding grants; and

(4) the minimum essential public health services to be provided under the grant and other standards applicable to the services to be provided under the grant.

(d) A municipality, county, public health district, or other political subdivision that receives a grant under this section, in consultation with the department, shall develop a plan to evaluate the effectiveness, accessibility, and quality of the essential public health services that are provided under the grant. The plan must:

(1) identify the outcomes that are intended to result from the use of the grant money and establish a mechanism to measure those outcomes; and

(2) establish performance standards for the delivery of essential public health services and a mechanism to measure compliance with those standards.

(e) The governing body of the municipality, the commissioners court of the county, or the members of a public health district may appoint a local health board to monitor the use of the money received under this section.

(f) A public health board established under Section 121.034 or 121.046 may serve as the local health board authorized under Subsection (e).

(g) The governing body of the municipality or the commissioners court of a county may serve as the local health board authorized under Subsection (e). If the governing body of the municipality or the commissioners court of the county elects to serve as the local health board, the governing body or commissioners court may appoint an advisory committee to advise the governing body or commissioners court with respect to the use of the money granted under this section.

(h) Chapter 783, Government Code, and standards adopted under that chapter control if applicable to a grant made under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999.

Sec. 121.0066. ESSENTIAL PUBLIC HEALTH SERVICES PROVIDED BY DEPARTMENT. (a) Subject to the availability of funds, the

department may provide essential public health services for a population for which a municipality, county, public health district, or other political subdivision is not receiving a grant to provide those services under Section 121.0065.

(b) Subject to the availability of funds, the department shall develop a plan that complies with Section 121.0065(d) to evaluate the effectiveness, accessibility, and quality of essential public health services provided under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999.

Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The board may designate geographic areas of the state as public health regions to provide public health services.

(b) The board shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The board shall establish the qualifications and terms of employment of a regional director.

(c) The board or its designee may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the board or commissioner, in a jurisdiction in the region in which the health authority fails to perform duties prescribed by the board under Section 121.024. The regional director shall perform the duties of a health authority in a jurisdiction in the region in which there is not a health authority.

(d), (e) Repealed by Acts 1999, 76th Leg., ch. 1378, Sec. 8, eff. June 19, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1378, Sec. 3, 8, eff. June 19, 1999.

Sec. 121.008. ANNUAL CONFERENCE. (a) The board shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

(b) A county or municipality may pay necessary expenses incurred by its health authority or director in attending the

conference.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. HEALTH AUTHORITIES**

Sec. 121.021. HEALTH AUTHORITY. A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 2, eff. Sept. 1, 1991.

Sec. 121.022. QUALIFICATIONS. (a) A health authority must be:

(1) a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state; and

(2) a resident of this state.

(b) To be qualified to serve as a health authority, the appointee must:

(1) take and subscribe to the official oath; and

(2) file a copy of the oath and appointment with the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.023. TERM OF OFFICE. A health authority serves for a term of two years and may be appointed to successive terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.024. DUTIES. (a) A health authority is a state officer when performing duties prescribed by state law.

(b) A health authority shall perform each duty that is:

(1) necessary to implement and enforce a law to protect the public health; or

(2) prescribed by the board.

(c) The duties of a health authority include:

- (1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;
- (2) aiding the board in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;
- (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the board in the manner and at the times prescribed by the board;
- (4) reporting to the board on any subject on which it is proper for the board to direct that a report be made; and
- (5) aiding the board in the enforcement of the following in the health authority's jurisdiction:
  - (A) proper rules, requirements, and ordinances;
  - (B) sanitation laws;
  - (C) quarantine rules; and
  - (D) vital statistics collections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.025. REMOVAL FROM OFFICE. A health authority may be removed from office for cause under the personnel procedures applicable to the heads of departments of the local government that the health authority serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. MUNICIPALITIES AND COUNTIES WITHOUT ORGANIZED LOCAL PUBLIC HEALTH DEPARTMENTS OR DISTRICTS**

Sec. 121.028. APPOINTMENT OF HEALTH AUTHORITY. (a) The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction.

(b) The governing body of a municipality or the commissioners court of a county described by Subsection (a) that is receiving a grant under Section 121.0065 shall appoint a physician as health authority.

(c) An individual appointed to serve as health authority for a county or municipality may serve as the health authority for one or more other jurisdictions under an interlocal contract made in accordance with Chapter 791, Government Code.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 4, eff. June 19, 1999.

Sec. 121.029. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the board, or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

- (1) meet the qualifications set out in Section 121.022(a);
- (2) be appointed as a designee in the same manner as the appointment of the health authority;
- (3) take, subscribe, and file the official oath and appointment with the board as required by Section 121.022(b); and
- (4) file a certified copy of the written delegation with the board.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the time to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity that appoints the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991.

#### SUBCHAPTER D. LOCAL HEALTH DEPARTMENTS



Sec. 121.031. ESTABLISHMENT. The governing body of a municipality or the commissioners court of a county may establish a local health department by majority vote.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.032. POWERS AND DUTIES. A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 5, eff. June 19, 1999.

Sec. 121.033. DEPARTMENT DIRECTOR. (a) The governing body of a municipality or the commissioners court of a county shall appoint the director of the municipality's or county's local health department.

(b) The director is the chief administrative officer of the local health department, and if the director is a physician, the director is the health authority in the local health department's jurisdiction.

(c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.

(d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the board.

(e) The governing body or the commissioners court, as appropriate, shall set the compensation of the director and the health authority in its jurisdiction, except that the compensation, including a salary, may be allowed only for services actually rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989.

Sec. 121.0331. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the board, or by this or any other law, to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

- (1) meet the qualifications set out in Section 121.022(a);
- (2) be appointed as a designee in the same manner as the appointment of the health authority;
- (3) take, subscribe, and file the official oath and appointment with the board as required by Section 121.022(b); and
- (4) file a certified copy of the written delegation with the board.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.

Sec. 121.034. PUBLIC HEALTH BOARD. (a) The governing body of a municipality that establishes a local health department may provide for the creation of an administrative or advisory public health board and the appointment of representatives to that board.

(b) The commissioners court of a county that establishes a local health department may provide for the creation of an advisory public health board and the appointment of representatives to that board.

(c) The director of the local health department is an ex

officio, nonvoting member of any public health board established for the local health department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. PUBLIC HEALTH DISTRICTS**

Sec. 121.041. ESTABLISHMENT. By a majority vote of each governing body, a public health district may be established by:

- (1) two or more counties;
- (2) two or more municipalities;
- (3) a county and one or more municipalities in the county;

or

(4) two or more counties and one or more municipalities in those counties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.042. ADMISSION TO DISTRICT. (a) Any governmental entity, including a school district, may apply to become a member of a public health district.

(b) The governing body of each member shall review the application.

(c) The governmental entity may be admitted to membership on terms acceptable to the applicant and the members if a majority of the governing body of each member approves the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.043. POWERS AND DUTIES. (a) A public health district may perform any public health function that any of its members may perform unless otherwise restricted by law.

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed for a local health department under Section 121.032(b).

(c) A public health district may sue and be sued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 476, Sec. 3, eff. Aug. 26, 1991.

Sec. 121.044. COOPERATIVE AGREEMENT. (a) The members of a public health district shall prepare a written cooperative agreement that sets out fully the terms of operation of the district.

(b) The terms in a cooperative agreement must include:

- (1) organizational structure;
- (2) financial administration; and
- (3) procedures for:
  - (A) modification of the cooperative agreement;
  - (B) admission, withdrawal, and expulsion of members;
  - (C) dissolution of the district; and
  - (D) selection and removal of a director.

(c) A cooperative agreement must be:

- (1) approved by the governing body of each member; and
- (2) signed by the appropriate officers of each governing

body.

(d) A modification of a cooperative agreement must be in writing. A modification is effective on approval by the governing body of each member.

(e) A copy of a cooperative agreement and of each modification shall be:

- (1) included in the minutes of the governing body of each member; and
- (2) filed with the clerk of each county and municipality in the district and with the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.045. DISTRICT DIRECTOR. (a) The members of a public health district shall appoint the director of the district.

(b) The director is the chief administrative officer of the public health district, and if the director is a physician, the director is the health authority in the district's jurisdiction.

(c) A member may designate a person to perform its appointment duties under this section.

(d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the

district, subject to the approval of the members and the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989.

Sec. 121.0451. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the board, or by this or any other law, to a properly qualified physician who is employed by the public health district to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

- (1) meet the qualifications set out in Section 121.022(a);
- (2) be appointed as a designee in the same manner as the appointment of the health authority;
- (3) take, subscribe, and file the official oath and appointment with the board as required by Section 121.022(b); and
- (4) file a certified copy of the written delegation with the board.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.

Sec. 121.046. PUBLIC HEALTH BOARD. (a) The cooperative agreement of a public health district may provide for the creation of an advisory or administrative public health board.

(b) An advisory public health board shall advise the members

and director on matters of public health.

(c) An administrative public health board may adopt substantive and procedural rules that are necessary and appropriate to promote and preserve the health and safety of the public. However, an administrative board may not adopt a rule that is not specifically authorized by state law, conflicts with a law of this state, or conflicts with an ordinance of a municipality or county in the district.

(d) A public health board may perform any function relating to the operation of the public health district that is required under the cooperative agreement.

(e) The terms of a cooperative agreement that provides for a public health board must include:

- (1) the composition and number of the representatives that compose the public health board;
- (2) a method for appointing representatives to the public health board;
- (3) the length of the representatives' terms, which must be staggered;
- (4) a requirement that a representative must have resided in the district for at least three years before the date of the representative's appointment;
- (5) a requirement that each representative serve without compensation;
- (6) the manner in which a vacancy is filled for an unexpired term;
- (7) the procedure and substantive criteria for the removal of a representative; and
- (8) a description of the relationship between the director and the public health board.

(f) The director is an ex officio, nonvoting member of a public health board established by the cooperative agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 121.047. FINANCES. The members of a public health district shall pay the costs necessary to operate the district, including costs for:

- (1) staff salaries;

- (2) supplies;
- (3) suitable offices;
- (4) health and clinic centers;
- (5) health services and facilities; and
- (6) maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. PUBLIC HEALTH CONSORTIUM**

Sec. 121.101. DEFINITION. In this chapter, "consortium" means the public health consortium established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

Sec. 121.102. CONSORTIUM ESTABLISHED. Subject to availability of funds, the department shall establish a public health consortium composed of:

- (1) The University of Texas Health Science Center at San Antonio;
- (2) The University of Texas M. D. Anderson Cancer Center;
- (3) The University of Texas Southwestern Medical Center;
- (4) The University of Texas Medical Branch at Galveston;
- (5) The University of Texas Health Science Center at Houston;
- (6) The University of Texas Health Science Center at Tyler;
- (7) the Texas Tech University Health Sciences Center;
- (8) The Texas A&M University Health Science Center;
- (9) the University of North Texas Health Science Center at Fort Worth; and
- (10) any other public institution of higher education that elects to participate in the consortium.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. [1844](#)), Sec. 15, eff. September 1, 2013.

Sec. 121.103. GENERAL DUTIES. (a) Subject to the availability

of funds, the department, in consultation with the consortium and local health units, local health departments, and public health districts, shall:

(1) develop curricula to provide training to public health workers;

(2) conduct research on improving health status outcomes and methods of monitoring those outcomes;

(3) develop performance standards for local health units, local health departments, and public health districts;

(4) develop competency certification standards for public health workers; and

(5) study the technology infrastructure available to local health units, local health departments, and public health districts and improve the use of this infrastructure to permit:

(A) statewide communication relating to disease surveillance and reporting of public health information; and

(B) immediate access to public health information and collaboration among public health professionals.

(b) The training curricula described by Subsection (a)(1) may include training for local health authorities.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

**CHAPTER 122. POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES  
RELATING TO PUBLIC HEALTH**

Sec. 122.001. COUNTY FUNDING FOR PUBLIC HEALTH AND SANITATION. The commissioners court of a county may appropriate and spend money from the county general revenues for public health and sanitation in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.002. HEALTH UNIT IN COUNTY WITH POPULATION OF LESS THAN 22,000. (a) The commissioners court of a county with a population of less than 22,000 may impose an ad valorem tax at a rate not to exceed five cents on each \$100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize



schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment for indigent persons who are not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(b) This section is effective for a county only if it is approved by a majority of the voters of the county at an election called for that purpose by the commissioners court on receipt of a petition signed by at least five percent of the property taxpaying voters in the county.

(c) The commissioners court may pay not more than half of the costs of medical treatment and immunization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(d) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.003. HEALTH UNIT IN COUNTY WITH POPULATION OF 22,200 TO 22,500. (a) The commissioners court of a county with a population of 22,200 to 22,500 may impose an ad valorem tax at a rate not to exceed 10 cents on each \$100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment or hospitalization of indigent persons who are not entitled to treatment or hospitalization under Chapter 61 (Indigent Health Care and Treatment Act).

(b) The commissioners court may pay not more than half of the costs of medical treatment or hospitalization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(c) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund.

Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.004. APPROPRIATION TO HOSPITAL ESTABLISHED BY DONATION. If a fund of at least \$50,000 is left by will or otherwise to establish and maintain a hospital in a municipality with a population of at least 10,000, the governing body of that municipality or the commissioners court of the county in which the municipality is located may make an appropriation to the hospital, in an amount that the governing body or commissioners court considers proper, to provide hospitalization and medical and surgical services for indigent residents of the municipality or county who are sick or wounded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.005. POWERS OF TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to:

(1) prevent the introduction of a communicable disease into the municipality, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease;

(2) establish, maintain, and regulate hospitals in the municipality or in any area within five miles of the municipal limits; or

(3) abate any nuisance that is or may become injurious to the public health.

(b) The governing body of a Type A general-law municipality may adopt rules:

(1) necessary or expedient to promote health or suppress disease; or

(2) to prevent the introduction of a communicable disease into the municipality, including quarantine rules, and may enforce those rules in the municipality and in any area within 10 miles of the municipality.

(c) The governing body of a Type A general-law municipality may fine a person who fails or refuses to observe the orders and rules of the health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.006. POWERS OF HOME-RULE MUNICIPALITIES. A home-rule municipality may:

(1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and

(2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 122.007. ESTABLISHMENT OF MEDICAL CLINICS IN CERTAIN COUNTIES. (a) The commissioners court of a county with a population of less than 20,000 may establish a medical clinic for the provision of health care services.

(b) The commissioners court may determine the types of health care services to be provided at the clinic, including medical care and treatment provided by a licensed physician, nursing care provided by a registered nurse, and dental care provided by a licensed dentist.

(c) The commissioners court may:

(1) purchase land on which to construct the clinic;

(2) construct the clinic, lease space for the clinic, or purchase and develop an existing building for the clinic; and

(3) operate or contract for the operation of the clinic.

(d) A county with a population of less than 20,000 that constructs a medical clinic under this section may continue to operate the clinic and exercise the powers provided by this section after the county exceeds that population.

Added by Acts 1991, 72nd Leg., ch. 758, Sec. 1, eff. Aug. 26, 1991.

Sec. 122.008. EMPLOYMENT FOR PUBLIC SCHOOLS AND COMPENSATION.

(a) The commissioners court of a county may employ one or more registered nurses to visit the public schools in the county.

(b) A nurse employed under Subsection (a) shall:

(1) investigate the health conditions and sanitary surroundings of the schools and the personal, physical, and health condition of students in the schools;

(2) cooperate with the Texas Department of Health and local health authorities; and

(3) perform other duties required by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 4, eff. Sept. 1, 1999.

### **SUBTITLE G. LICENSES**

#### **CHAPTER 141. YOUTH CAMPS**

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Texas Youth Camp Safety and Health Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 141.002. DEFINITIONS. In this chapter:

(1) "Camper" means a minor who is attending a youth camp on a day care or boarding basis.

(2) "Day camp" includes any camp that primarily operates during any portion of the day between 7 a.m. and 10 p.m. for a period of four or more consecutive days but may incidentally offer not more than two overnight stays each camp session. The term does not include a facility required to be licensed with the Department of Protective and Regulatory Services.

(3) "Person" means an individual, partnership, corporation, association, or organization.

(4) "Resident youth camp" includes any camp that for a period of four or more days continuously provides residential services, including overnight accommodations for the duration of the camp session.

(5) "Youth camp" means a facility or property, other than a facility required to be licensed by the Department of Protective and Regulatory Services, that:

(A) has the general characteristics of a day camp,

resident camp, or travel camp;

(B) is used primarily or partially for recreational, athletic, religious, or educational activities; and

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four days.

(6) "Youth camp operator" means a person who owns, operates, controls, or supervises a youth camp, regardless of profit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.076, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 2001.

Sec. 141.0021. EXEMPTION. This chapter does not apply to a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

Added by Acts 2003, 78th Leg., ch. 1302, Sec. 1, eff. June 20, 2003.

Sec. 141.003. LICENSE REQUIRED. A person may not own, operate, control, or supervise a youth camp unless the person:

(1) holds a license issued under this chapter for that camp; and

(2) complies with this chapter and department rules and orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 141.0035. LICENSE FEES. (a) The board by rule shall establish the amount of the fee for obtaining or renewing a license under this chapter. The board shall set the fee in a reasonable amount designed to recover the direct and indirect costs to the department of administering and enforcing this chapter. The board may set fees in a different amount for resident youth camps and day youth camps to reflect differences in the costs of administering and

enforcing this chapter for resident and day camps.

(b) Before adopting or amending a rule under Subsection (a), the board shall solicit comments and information from the operators of affected youth camps and allow affected youth camp operators the opportunity to meet with appropriate department staff who are involved with the rulemaking process.

Added by Acts 2003, 78th Leg., ch. 1110, Sec. 1, eff. Sept. 1, 2003.

Sec. 141.004. LICENSE APPLICATION AND ISSUANCE. (a) To obtain a license, a person must submit a license application accompanied by a license fee in an amount set by the board.

(b) On receiving a license application, the department shall inspect the applicant's facilities, operations, and premises and shall issue a license to each applicant who will operate a youth camp in accordance with this chapter and rules adopted under this chapter.

(c) The department shall issue serially numbered licenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 2, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1110, Sec. 2, eff. Sept. 1, 2003.

Sec. 141.005. LICENSE RENEWAL. (a) A person holding a license issued under this chapter must renew the license annually by submitting a renewal application on a date determined by board rule on a form provided by the department.

(b) The application must be accompanied by a renewal fee in an amount set by the board.

(c) The department may not renew the license of a youth camp which has not corrected deficiencies before the application for renewal is submitted. The board shall adopt substantive and procedural rules for the submission by a youth camp operator of evidence that a deficiency or deficiencies have been corrected.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 3, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1373, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1110, Sec. 3, eff. Sept. 1, 2003.

Sec. 141.006. PRINCIPAL AUTHORITY FOR YOUTH CAMPS. The department is the principal authority on matters relating to health and safety conditions at youth camps. In addition to the powers and duties established by this chapter, the department has any other powers necessary and convenient to carry out its responsibilities under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 141.007. INSPECTIONS. (a) An employee or agent of the department may enter any property for which a license is issued under this chapter, property for which a license application to operate a youth camp is pending, or property on which a youth camp is in operation to investigate and inspect conditions relating to the health and safety of the campers.

(b) An employee or agent who enters a youth camp to investigate and inspect conditions shall notify the person in charge of the camp of the inspector's presence and shall present proper credentials. The department may exercise the remedies authorized by Section 141.014(b) if the employee or agent is not allowed to enter.

(c) The department may prescribe reasonable record-keeping requirements for licensed youth camps, including a requirement that the youth camp keep records relating to matters involving the health and safety of campers. An employee or agent of the department may examine, during regular business hours, any records relating to the health and safety of campers.

(d) An employee or agent of the department who enters a youth camp to investigate and inspect conditions shall:

(1) notify the person in charge of the camp or the person's designee of any violations as they are discovered; and

(2) allow the camp to correct the violations while the investigation and inspection is occurring.

(e) The department may not extend or delay an investigation or inspection to allow the youth camp to correct a violation under Subsection (d)(2).

(f) An employee or agent of the department performing an investigation and inspection under this section may not report a violation that is significant under the department's rules if the violation is corrected during the investigation and inspection.

(g) A penalty may not be imposed on a youth camp for a violation that is significant under the department's rules if the violation is corrected during an investigation and inspection under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 1, eff. Sept. 1, 2003.

Sec. 141.008. ADOPTION OF RULES; EXEMPTION FROM APPLICATION OF CERTAIN RULES. (a) The board may adopt rules to implement this chapter. In adopting the rules the board shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032(b) and 2001.033, Government Code. In developing the rules, the board shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

(b) A youth camp operator may grant an exemption from compliance with a rule that requires physical examinations or inoculations for children or staff if the exemption is requested on the grounds of religious convictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 2, eff. Sept. 1, 2003.

Sec. 141.009. STANDARDS. The board by rule shall establish health and safety standards for youth camps. The standards may relate to:

- (1) adequate and proper supervision at all times of camp activities;
- (2) qualifications for directors, supervisors, and staff and sufficient numbers of those persons;
- (3) proper safeguards for sanitation and public health;
- (4) adequate medical services for personal health and first aid;
- (5) proper procedures for food preparation, handling, and mass feeding;
- (6) healthful and sufficient water supply;
- (7) proper waste disposal;
- (8) proper water safety procedures for swimming pools, lakes, and waterways;



- (9) safe boating equipment;
- (10) proper maintenance and safe use of motor vehicles;
- (11) safe buildings and physical facilities;
- (12) proper fire precautions;
- (13) safe and proper recreational and other equipment;
- (14) proper regard for density and use of the premises;

and

- (15) records of criminal convictions of camp personnel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 3, eff. Sept. 1, 2001.

Sec. 141.0095. TRAINING AND EXAMINATION PROGRAM. (a) A person holding a license issued under this chapter may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(1) the individual submits to the person or the youth camp has on file documentation that verifies the individual within the preceding two years successfully completed the training and examination program required by this section; or

(2) the individual successfully completes the youth camp's training and examination program, which must be approved by the department as required by this section, during the individual's first workweek and the youth camp issues and files documentation verifying that fact.

(b) A person holding a license issued under this chapter must retain in the person's records a copy of the documentation required or issued under Subsection (a) for each employee or volunteer until the second anniversary of the examination date.

(c) A person applying for or holding an employee or volunteer position involving contact with campers at a youth camp must successfully complete the training and examination program on sexual abuse and child molestation required by this section during the applicable period described by Subsection (a).

(d) In accordance with this section and the criteria and guidelines developed by the training advisory committee established under Section 141.0096, the executive commissioner of the Health and Human Services Commission by rule shall establish criteria and guidelines for training and examination programs on sexual abuse and

child molestation. The department may approve training and examination programs offered by trainers under contract with youth camps or by online training organizations or may approve programs offered in another format authorized by the department.

(e) A training and examination program on sexual abuse and child molestation approved by the department must include training and an examination on:

(1) the definitions and effects of sexual abuse and child molestation;

(2) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(3) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(4) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation.

(f) The department may assess a fee in the amount necessary to cover the costs of administering this section to each person that applies for the department's approval of a training and examination program on sexual abuse and child molestation under this section.

(g) The department at least every five years shall review each training and examination program on sexual abuse and child molestation approved by the department to ensure the program continues to meet the criteria and guidelines established by rule under this section.

Added by Acts 2005, 79th Leg., Ch. 860 (S.B. 990), Sec. 1, eff. September 1, 2005.

Sec. 141.0096. TRAINING ADVISORY COMMITTEE. (a) The department shall appoint a training advisory committee to advise the department and the executive commissioner of the Health and Human Services Commission in the development of criteria and guidelines for the training and examination program on sexual abuse and child molestation required under Section 141.0095 and to perform any other functions requested by the department.

(b) The training advisory committee consists of not more than

nine members selected by the commissioner of state health services as follows:

(1) at least two members who represent the general public; and

(2) other members, who include experienced camping professionals representing the camping communities of this state, representatives of youth camps selected by the department, and representatives of the Council on Sex Offender Treatment established under Chapter 110, Occupations Code.

(c) The training advisory committee shall meet at the call of the commissioner of state health services.

(d) The training advisory committee may elect a chair, vice chair, and secretary from among its members and may adopt rules for the conduct of its own activities.

(e) An advisory committee member may not receive compensation or reimbursement of expenses for serving on the advisory committee.

Added by Acts 2005, 79th Leg., Ch. 860 (S.B. 990), Sec. 1, eff. September 1, 2005.

Sec. 141.010. ADVISORY COMMITTEE. (a) The board shall appoint a committee to advise the board in the development of standards and procedures, make recommendations to the board regarding the content of the rules adopted to implement this Act, and perform any other functions requested by the board in the implementation and administration of the Act.

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the board shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(c) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(d) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(e) The advisory committee will meet annually and at the call

of the commissioner.

(f) The advisory committee may elect a chairperson, vice-chairperson, and secretary from among its members and may adopt rules for the conduct of its own activities.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 636, Sec. 3, eff. Sept. 1, 2003.

Sec. 141.011. OPERATOR'S DUTY. A youth camp operator shall provide each camper with safe and healthful conditions, facilities, and equipment that are free from recognized hazards that cause or may tend to cause death, serious illness, or bodily harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 141.010 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.012. LICENSE REVOCATION. (a) If the department finds that a violation of this chapter or a rule adopted under this chapter has occurred or is occurring at a youth camp for which a license has been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(b) The department may initiate proceedings to revoke the license if the licensee refuses or fails to comply with the notice in the time and manner directed in the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 141.011 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.013. BOARD HEARINGS. (a) The board may:

- (1) call and conduct hearings;
- (2) administer oaths;
- (3) receive evidence;
- (4) issue subpoenas for witnesses, papers, and documents related to the hearing; and
- (5) make findings of fact and decisions concerning the

administration of this chapter and rules adopted under this chapter.

(b) The board may delegate the authority to call and conduct hearings to employees of the department.

(c) Reasonable notice of the hearing shall be given to all involved parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 141.012 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.014. JUDICIAL REVIEW. A person affected by a ruling, order, or other act of the department may appeal the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 141.013 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule or order adopted under this chapter is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the department may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) The district court, on a finding that the person is violating this chapter or a rule or order adopted under this chapter, shall grant the injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(d) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person:

(1) is violating or threatening to violate this chapter or a rule or order adopted under this chapter; or

(2) is taking any other action that creates an emergency

condition that constitutes an imminent danger to the health, safety, or welfare of campers at a youth camp.

(e) An action for injunctive relief, recovery of a civil penalty, or both, may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(f) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(g) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

(h) A civil penalty recovered in an action brought by the department under this chapter shall be deposited to the credit of the youth camp health and safety fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 141.014 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.016. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty if a person violates this Act or a rule or order adopted or license issued under this Act.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) such other matters as justice may require.

(c) The penalty may not exceed \$1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 636, Sec. 4, eff. Sept. 1, 2003.

Sec. 141.017. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.

Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the commissioner shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:

(A) send the amount of the penalty to the commissioner for placement in an escrow account; or

(B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.

Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

- (1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the bond if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.

Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.

## **CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES**

### **SUBCHAPTER A. HOME AND COMMUNITY SUPPORT SERVICES LICENSE**

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Administrative support site" means a facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

(2) "Alternate delivery site" means a facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by a hospice;

(B) that is not the hospice's principal place of business;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(3) "Bereavement" means the process by which a survivor of a deceased person mourns and experiences grief.

(4) "Bereavement services" means support services offered



to a family during bereavement.

(5) "Branch office" means a facility or site in the geographical area served by a home and community support agency where home health or personal assistance services are delivered or active client records are maintained.

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(7) "Certified home health services" means home health services that are provided by a certified agency.

(8) "Chief financial officer" means an individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(9) "Controlling person" means a person who controls a home and community support services agency or other person as described by Section 142.0012.

(10) "Council" means the Home and Community Support Services Advisory Council.

(11) "Counselor" means an individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services, to both the client and the family.

(11-a) "Department" means the Department of Aging and Disability Services.

(11-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12) "Home and community support services agency" means a person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(12-a) "Home and community support services agency administrator" or "administrator" means the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(14) "Hospice" means a person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(15) "Hospice services" means services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(16) "Inpatient unit" means a facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 U.S.C. Section

1395 et seq.); and

(B) standards adopted under this chapter.

(17) "Independent living environment" means:

(A) a client's individual residence, which may include a group home or foster home; or

(B) other settings where a client participates in activities, including school, work, or church.

(18) "Interdisciplinary team" means a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(19) "Investigation" means an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

(20) "Palliative care" means intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(21) "Person" means an individual, corporation, or association.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with the department in accordance with Section 142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

- (D) feeding;
- (E) exercising;
- (F) toileting;
- (G) positioning;
- (H) assisting with self-administered medications;
- (I) routine hair and skin care; and
- (J) transfer or ambulation.

(23) "Place of business" means an office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. The term does not include an administrative support site.

(24) "Residence" means a place where a person resides and includes a home, a nursing home, a convalescent home, or a residential unit.

(25) "Residential unit" means a facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under this chapter.

(26) "Respite services" means support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(27) "Social worker" means an individual licensed as a social worker under Chapter 505, Occupations Code.

(28) "Support services" means social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(29) "Terminal illness" means an illness for which there is a limited prognosis if the illness runs its usual course.

(30) "Volunteer" means an individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 42, 43, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 702, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.193, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892,

Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 63, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 9, eff. September 1, 2011.

Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that home and community support services agencies in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum standards for acceptable quality of care, and a violation of a minimum standard established or adopted under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

- (1) client independence and self-determination;
- (2) humane treatment;
- (3) continuity of care;
- (4) coordination of services;
- (5) professionalism of service providers;
- (6) quality of life; and
- (7) client satisfaction with services.

(b) The department shall protect clients of home and community support services agencies by regulating those agencies and:

- (1) adopting rules relating to quality of care and quality of life;
- (2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;
- (3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
- (4) enabling agencies to provide services that allow clients to maintain the highest possible degree of independence and self-determination; and
- (5) providing the public with helpful and understandable information relating to agencies in this state.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a home and community support services agency or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a home and community support services agency;

(2) a person who is a controlling person of a management company or other business entity that operates a home and community support services agency or that contracts with another person for the operation of a home and community support services agency; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a home and community support services agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a home and community support services agency.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.002. LICENSE REQUIRED. (a) Except as provided by Section 142.003, a person, including a health care facility licensed under this code, may not engage in the business of providing home health, hospice, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, or personal assistance services for pay without a home and community

support services agency license authorizing the person to perform those services issued by the department for each place of business from which home health, hospice, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

(b) A person who is not licensed to provide home health services under this chapter may not indicate or imply that the person is licensed to provide home health services by the use of the words "home health services" or in any other manner.

(c) A person who is not licensed to provide hospice services under this chapter may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services under this chapter.

(d) A license to provide hospice services issued under this chapter authorizes a hospice to own or operate a residential unit or inpatient unit at the licensed site in compliance with the standards and rules adopted under this chapter.

(e) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location. A change of ownership or location shall be reported to the department.

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.194, eff. Sept. 1, 2003.

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by rules adopted by the executive commissioner.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 44, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 5, eff. Sept. 1, 1993.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 10, eff. September 1, 2011.

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the



person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;

(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;

(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;

(15) a person or organization providing sitter-companion services or chore or household services that do not involve personal care, health, or health-related services;

(16) a licensed health care facility that provides hospice services under a contract with a hospice;

(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248;

(18) the Texas Department of Criminal Justice;

(19) a person that provides home health, hospice, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program; or

(C) Section 534.152, Government Code; or

(20) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or

employee of an entity acting as a consumer's fiscal agent under Section 531.051, Government Code.

(b) A home and community support services agency that owns or operates an administrative support site is not required to obtain a separate license under this chapter for the administrative support site.

(c) A hospice that operates or provides hospice services to an inpatient unit under a contract with a licensed health care facility is not required to obtain an alternate delivery site license for that inpatient unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 769, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.777, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.55, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 1.02, eff. September 1, 2013.

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide home health, hospice, or personal assistance services must:

(1) file a written application on a form prescribed by the department indicating the type of service the applicant wishes to provide;

(2) cooperate with any surveys required by the department for a license; and

(3) pay the license fee prescribed by this chapter.

(b) In addition to the requirements of Subsection (a), if the applicant is a certified agency when the application for a license to provide certified home health services is filed, the applicant must maintain its Medicare certification. If the applicant is not a certified agency when the application for a license to provide certified home health services is filed, the applicant must establish that it is in the process of receiving its certification from the United States Department of Health and Human Services.

(c) The board by rule shall require that, at a minimum, before

the department may approve a license application, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;

(2) a list of the management personnel for the proposed home and community support services agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the license;

(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the board relating to the quality of care;

(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health, hospice, or personal assistance services under the license;

(5) identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;

(6) identification of any controlling person with respect to the applicant; and

(7) documentation relating to any controlling person identified under Subdivision (6), if requested by the department and relevant to the controlling person's compliance with any applicable licensing standard required or adopted by the board under this chapter.

(d) Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

(e) A home and community support services agency owned or operated by a state agency directly providing services is not required to provide the information described in Subsections (c)(1) and (5).

(f) The department shall evaluate and consider all information collected during the application process.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 45, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 4, eff. Sept. 1, 1999.

Sec. 142.005. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in any other state in which the applicant, license holder, or controlling person operates or operated a home and community support services agency.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a home and community support services agency license to provide home health, hospice, or personal assistance services for each place of business to an applicant if:

(1) the applicant:

(A) qualifies for the license to provide the type of service that is to be offered by the applicant;

(B) submits an application and license fee as required by this chapter; and

(C) complies with all applicable licensing standards required or adopted by the board under this chapter; and

(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted by the board under this chapter.

(b) A license issued under this chapter expires two years after the date of issuance. The executive commissioner of the Health and Human Services Commission by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license

holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The department may issue a temporary license to an applicant for an initial license.

(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as the Joint Commission on Accreditation of Healthcare Organizations or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.

(d) to (f) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(g) The license must designate the types of services that the home and community support services agency is authorized to provide at or from the designated place of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 5, eff. September 1, 2007.

Sec. 142.0061. POSSESSION OF STERILE WATER OR SALINE. A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients under physician's orders:

- (1) sterile water for injection and irrigation; and
- (2) sterile saline for injection and irrigation.

Added by Acts 1993, 73rd Leg., ch. 16, Sec. 1, eff. April 2, 1993. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0062. POSSESSION OF CERTAIN VACCINES OR TUBERCULIN.

(a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

- (1) hepatitis B vaccine;
- (2) influenza vaccine;
- (3) tuberculin purified protein derivative for tuberculosis testing; and
- (4) pneumococcal polysaccharide vaccine.

(b) A home and community support services agency that purchases, stores, or transports a vaccine or tuberculin under this section shall ensure that any standing order for the vaccine or tuberculin:

- (1) is signed and dated by the physician;
- (2) identifies the vaccine or tuberculin covered by the order;
- (3) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;
- (4) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and
- (5) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.195, eff. Sept. 1, 2003.

Sec. 142.0063. POSSESSION OF CERTAIN DANGEROUS DRUGS. (a) A home and community support services agency in compliance with this section or its employees who are registered nurses or licensed

vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients in accordance with Subsection (c) the following dangerous drugs:

(1) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(A) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;

(B) 1,000 milliliters of five percent dextrose in water injection; or

(C) sterile saline; or

(2) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(A) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(B) epinephrine HCl solution in a concentration of 1 to 1,000;

(C) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;

(D) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(E) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(F) promethazine in a concentration of 25 milligrams per milliliter;

(G) glucagon in a concentration of one milligram per milliliter;

(H) furosemide in a concentration of 10 milligrams per milliliter;

(I) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or

(J) lidocaine HCl solution in a concentration of one percent in a two-milliliter vial.

(b) A home and community support services agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container under this section only if the agency has established policies and procedures to ensure that:

(1) the container is handled properly with respect to storage, transportation, and temperature stability;

(2) a drug is removed from the container only on a

physician's written or oral order;

(3) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(4) the agency maintains a written record of the dates and times the container is in the possession of a registered nurse or licensed vocational nurse.

(c) A home and community support services agency or the agency's authorized employee who administers a drug listed in Subsection (a) may administer the drug only in the patient's residence under physician's orders in connection with the provision of emergency treatment or the adjustment of:

(1) parenteral drug therapy; or

(2) vaccine or tuberculin administration.

(d) If a home and community support services agency or the agency's authorized employee administers a drug listed in Subsection (a) pursuant to a physician's oral order, the physician shall promptly send a signed copy of the order to the agency, and the agency shall:

(1) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or facsimile transmission; and

(2) not later than 20 days after receipt of the order, send a copy of the order as signed by and received from the physician to the dispensing pharmacy.

(e) A pharmacist that dispenses a sealed portable container under this section shall ensure that the container:

(1) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(2) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:

(A) the date that is six months after the date on which the container is dispensed; or

(B) the earliest expiration date of any drug in the container; and

(3) remains in the pharmacy or under the control of a pharmacist, registered nurse, or licensed vocational nurse.

(f) If a home and community support services agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this section, the agency shall



deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(1) the seventh day after the date on which the seal on the container is broken; or

(2) the date for which notice is provided on the container label.

(g) A pharmacy that dispenses a sealed portable container under this section shall take reasonable precautionary measures to ensure that the home and community support services agency receiving the container complies with Subsection (f). On receipt of a container under Subsection (f), the pharmacy shall perform an inventory of the drugs used from the container and shall restock and reseal the container before delivering the container to the agency for reuse.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0065. DISPLAY OF LICENSE. A license issued under this chapter shall be displayed in a conspicuous place in the designated place of business and must show:

(1) the name and address of the licensee;

(2) the name of the owner or owners, if different from the information provided under Subdivision (1);

(3) the license expiration date; and

(4) the types of services authorized to be provided under the license.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 9, eff. Sept. 1, 1993.

Sec. 142.007. NOTICE OF DRUG TESTING POLICY. An agency licensed under this chapter shall provide to the following persons a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients:

(1) each person applying for services from the agency; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.008. BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a license to provide home health or personal assistance services.

(b) The board by rule shall establish eligibility requirements for a branch office license.

(c) A branch office license expires on the same date as the license to provide home health or personal assistance services held by the applicant for the branch office license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 10, eff. Sept. 1, 1993.

Sec. 142.0085. ALTERNATE DELIVERY SITE LICENSE. (a) The department shall issue an alternate delivery site license to a qualified hospice.

(b) The board by rule shall establish standards required for the issuance of an alternate delivery site license.

(c) An alternate delivery site license expires on the same date as the license to provide hospice services held by the hospice.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 11, eff. Sept. 1, 1993.

Sec. 142.009. SURVEYS; CONSUMER COMPLAINTS. (a) The department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct a survey incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(a-1) A license applicant or license holder must provide the department representative conducting the survey with a reasonable and safe workspace at the premises. The executive commissioner may adopt rules to implement this subsection.

(b) A home and community support services agency shall provide each person who receives home health, hospice, or personal assistance services with a written statement that contains the name, address, and telephone number of the department and a statement that informs the recipient that a complaint against a home and community support services agency may be directed to the department.

(c) The department or its authorized representative shall

investigate each complaint received regarding the provision of home health, hospice, or personal assistance services, including any allegation of abuse, neglect, or exploitation of a child under the age of 18, and may, as a part of the investigation:

(1) conduct an unannounced survey of a place of business, including an inspection of medical and personnel records, if the department has reasonable cause to believe that the place of business is in violation of this chapter or a rule adopted under this chapter;

(2) conduct an interview with a recipient of home health, hospice, or personal assistance services, which may be conducted in the recipient's home if the recipient consents;

(3) conduct an interview with a family member of a recipient of home health, hospice, or personal assistance services who is deceased or other person who may have knowledge of the care received by the deceased recipient of the home health, hospice, or personal assistance services; or

(4) interview a physician or other health care practitioner, including a member of the personnel of a home and community support services agency, who cares for a recipient of home health, hospice, or personal assistance services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

(2) to federal, state, or local law enforcement personnel;

(3) with the consent of each person identified in the information released;

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

(e) The department's representative shall hold a conference with the person in charge of the home and community support services agency before beginning the on-site survey to explain the nature and scope of the survey. When the survey is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent.

(f) At the conclusion of a survey or complaint investigation, the department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes. The department's representative shall leave a written list of the preliminary findings with the agency at the exit conference.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the home and community support services agency administrator:

(1) specific and timely written notice of the official findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the name, of each department representative conducting or reviewing the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not

confidential under state law.

(g-1) If the department or the department's authorized representative discovers any additional violations during the review of field notes or preparation of the official statement of deficiencies for a home and community support services agency, the department or the department's representative shall conduct an additional exit conference regarding the additional violations. The additional exit conference must be held in person and may not be held over the telephone, by e-mail, or by facsimile transmission.

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from the Joint Commission for Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(i) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(i) Except as provided by Subsection (h), the department may not renew an initial home and community support services agency license unless the department has conducted an initial on-site survey of the agency.

(j) Except as provided by Subsections (h) and (l), an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys required for each of the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) The department and other state agencies that are under the Health and Human Services Commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce

duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The Health and Human Services Commission shall review the recommendation of the council relating to the memorandum of understanding before considering approval. The memorandum of understanding must be approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 46, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.56, 2.156(a)(1), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 11, eff. September 1, 2011.

Sec. 142.0091. TRAINING. (a) The department shall provide specialized training to representatives of the department who survey home and community support services agencies. The training must include information relating to:

- (1) the conduct of appropriate surveys that do not focus exclusively on medical standards under an acute care model; and
- (2) acceptable delegation of nursing tasks.

(b) In developing and updating the training required by Subsection (a), the department shall consult with and include providers of home health, hospice, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

(c) The department at least semiannually shall provide joint training for home and community support services agencies and surveyors on subjects that address the 10 most common violations of federal or state law by home and community support services agencies.

The department may charge a home and community support services agency a fee, not to exceed \$50 per person, for the training.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 13, eff. September 1, 2011.

Sec. 142.0092. CONSUMER COMPLAINT DATA. (a) The department shall maintain records or documents relating to complaints directed to the department by consumers of home health, hospice, or personal assistance services. The department shall organize the records or documents according to standard, statewide categories as determined by the department. In determining appropriate categories, the department shall make distinctions based on factors useful to the public in assessing the quality of services provided by a home and community support services agency, including whether the complaint:

- (1) was determined to be valid or invalid;
- (2) involved significant physical harm or death to a patient;
- (3) involved financial exploitation of a patient; or
- (4) resulted in any sanction imposed against the agency.

(b) The department shall make the information maintained under this section available to the public in a useful format that does not identify individuals implicated in the complaints.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0093. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against another person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice, or personal assistance services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0094. USE OF REGULATORY SURVEY REPORTS AND OTHER DOCUMENTS. (a) Except as otherwise provided by this section, a survey report or other document prepared by the department that relates to regulation of a home and community support services agency is not admissible as evidence in a civil action to prove that the agency violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department survey reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 142.013;

(B) an action seeking imposition of a civil penalty under Section 142.014;

(C) a contested case hearing involving imposition of an administrative penalty under Section 142.017; and

(D) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

(2) bar the admission into evidence of department survey reports or other documents that are offered:

(A) to establish warning or notice to a home and community support services agency of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that a home and community support services agency violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department survey reports



or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the survey reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.010. FEES. (a) The department shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than \$600 or more than \$2,000 for a license to provide home health, hospice, or personal assistance services.

(b) The board shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount of initial and renewal license fees.

(c) A fee charged under this section is nonrefundable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 13, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 7, eff. September 1, 2007.

Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If certain application information as specified by executive commissioner rule changes after the applicant submits an application to the department for a license under this chapter or after the department issues the license, the license holder shall report the change to the department and pay a fee not to exceed \$50 not later than the time specified by executive commissioner rule.

(b) The executive commissioner by rule shall:

(1) specify the information provided in an application that a license holder shall report to the department if the information changes;

(2) prescribe the time for reporting a change in the

application information required by Subdivision (1);

(3) establish which changes required to be reported under Subdivision (1) will require department evaluation and approval; and

(4) set the amount of a late fee to be assessed against a license holder who fails to report a change in the application information within the time prescribed under Subdivision (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.06, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 14, eff. September 1, 2011.

Sec. 142.0105. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by submitting a completed application for renewal and paying the required renewal fee to the department not later than the 45th day before the expiration date of the license. A person whose license has expired may not engage in activities that require a license.

(b) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with department rules.

(c) Not later than the 120th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department. The written notice must include an application for license renewal and instructions for completing the application.

Added by Acts 1999, 76th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 8, eff. September 1, 2007.

Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department may deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 102.001,

Occupations Code.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the home and community support services agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation.

(c) The department may suspend or revoke a home and community support services agency's license to provide certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency. A home and community support services agency that is licensed to provide certified home health services and that submits a request for a hearing as provided by Subsection (d) is subject to the requirements of this chapter relating to a home and community support services agency that is licensed to provide home health services, but not certified home health services, until the suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court.

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing before the department if the person submits a written request to the department. Chapter 2001, Government Code and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 47, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 9, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 15, eff.

September 1, 2011.

Sec. 142.012. POWERS AND DUTIES. (a) The executive commissioner shall adopt rules necessary to implement this chapter. The executive commissioner may adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding:

- (1) an administrator's management of daily operations of the home and community support services agency;
- (2) an administrator's responsibility for supervising the provision of quality care to agency clients;
- (3) an administrator's implementation of agency policy and procedures; and
- (4) an administrator's responsibility to be available to the agency at all times in person or by telephone.

(b) The executive commissioner by rule shall set minimum standards for home and community support services agencies licensed under this chapter that relate to:

- (1) qualifications for professional and nonprofessional personnel, including volunteers;
- (2) supervision of professional and nonprofessional personnel, including volunteers;
- (3) the provision and coordination of treatment and services, including support and bereavement services, as appropriate;
- (4) the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;
- (5) clinical and business records;
- (6) financial ability to carry out the functions as proposed;
- (7) safety, fire prevention, and sanitary standards for residential units and inpatient units; and
- (8) any other aspects of home health, hospice, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social

Security Act (42 U.S.C. Section 1395 et seq.).

(d) The department shall prescribe forms necessary to perform its duties.

(e) The department shall require each person or home and community support services agency providing home health, hospice, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 15, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.08, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 16, eff. September 1, 2011.

Sec. 142.013. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

(1) prohibit the person from continuing the violation; or  
(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 142.014. CIVIL PENALTY. (a) A person who engages in the business of providing home health, hospice, or personal assistance service, or represents to the public that the person is a provider of home health, hospice, and personal assistance services for pay, without a license issued under this chapter authorizing the services that are being provided is liable for a civil penalty of not less than \$1,000 or more than \$2,500 for each day of violation. Penalties may be appropriated only to the department and to administer this chapter.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. The attorney general shall bring suit on behalf of the state to collect the civil penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 16, eff. Sept. 1, 1993.

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES.

(a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.02, eff. Sept. 1, 1999.

Sec. 142.015. ADVISORY COUNCIL. (a) The Home and Community Support Services Advisory Council is composed of the following 13 members, appointed by the governor:

(1) three consumer representatives;

(2) two representatives of agencies that are licensed to provide certified home health services;

(3) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(4) three representatives of agencies that are licensed to provide hospice services, with one representative appointed from:

(A) a community-based non-profit provider of hospice services;

(B) a community-based proprietary provider of hospice services; and

(C) a hospital-based provider of hospice services; and

(5) three representatives of agencies that are licensed to provide personal assistance services.

(b) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec.

7.01(18), eff. Nov. 12, 1991.

(c) The council shall advise the department on licensing standards and on the implementation of this chapter. At each meeting of the council, the department shall provide an analysis of enforcement actions taken under this chapter, including the type of enforcement action, the results of the action, and the basis for the action. The council may advise the department on its implementation of the enforcement provisions of this chapter.

(d) Members of the council serve staggered two-year terms, with the terms of seven members expiring on January 31 of each even-numbered year and the terms of six members expiring on January 31 of each odd-numbered year.

(e) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(f) The council shall meet at least once a year and may meet at other times at the call of the presiding officer, any three members of the council, or the commissioner.

(g) Members of the council serve without compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 48, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(18), eff. Nov. 12, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 17, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 6, eff. Sept. 1, 1997.

Sec. 142.016. MEMORANDUM OF UNDERSTANDING RELATING TO NURSING SERVICES; GUIDELINES. (a) The Texas Board of Nursing and the department shall adopt a memorandum of understanding governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing. The agencies periodically shall review and shall renew or modify the memorandum as necessary.

(b) The Texas Board of Nursing and the department shall consult with an advisory committee in developing, modifying, or renewing the memorandum of understanding. The advisory committee shall be appointed by the Texas Board of Nursing and the department and at a minimum shall include:

- (1) one representative from the Texas Board of Nursing and one representative from the department to serve as cochairmen;
- (2) one representative from the Texas Department of Mental Health and Mental Retardation;
- (3) one representative from the Texas Nurses Association;
- (4) one representative from the Texas Association for Home Care, Incorporated, or its successor;
- (5) one representative from the Texas Hospice Organization, Incorporated, or its successor;
- (6) one representative of the Texas Respite Resource Network or its successor; and
- (7) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(c) The department shall prepare guidelines according to the memorandum of understanding required by Subsection (a) for licensed home and community support services agencies in providing personal assistance services to clients.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 18, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.196, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 64, eff. September 1, 2007.

Sec. 142.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, or personal assistance services.

(b) The penalty shall be not less than \$100 or more than \$1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate



violation.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the department by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty

against a state agency.

(j) The department may assess an administrative penalty without providing a reasonable period of time to the agency to correct the violation if the violation:

- (1) results in serious harm or death;
- (2) constitutes a serious threat to health or safety;
- (3) substantially limits the agency's capacity to provide care;
- (4) is a violation in which a person:
  - (A) makes a false statement, that the person knows or should know is false, of a material fact:
    - (i) on an application for issuance or renewal of a license or in an attachment to the application; or
    - (ii) with respect to a matter under investigation by the department;
  - (B) refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by an agency;
  - (C) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;
  - (D) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
  - (E) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or
  - (F) fails to submit:
    - (i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or
    - (ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from the department that the previously submitted plan of correction is not acceptable;
- (5) is a violation of Section 142.0145; or
- (6) involves the rights of the elderly under Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 276, Sec. 10, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.778, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 9, eff. September 1, 2007.

Sec. 142.0171. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall:

- (1) set a hearing;
  - (2) give written notice of the hearing to the person; and
  - (3) designate a hearings examiner to conduct the hearing.
- (b) The hearings examiner shall make findings of fact and

conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0173. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is

approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a

supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0174. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.  
Amended by:

Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 1, eff. September 1, 2005.

Sec. 142.0175. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 142.013 or 142.014 or to enforce an administrative penalty assessed under Section 142.0173 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.018. REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT. (a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner of the Health and Human Services Commission under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:

(1) the department; and

(2) the Department of Protective and Regulatory Services or other appropriate state agency as required by Section 48.051, Human Resources Code.

(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.197, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 3, eff. September 1, 2011.

Sec. 142.019. CERTAIN PHYSICIAN REFERRALS PROHIBITED. A physician may not refer a patient to a home and community support services agency if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.

Sec. 142.020. DISPOSAL OF SPECIAL OR MEDICAL WASTE. (a) A home and community support services agency that generates special or medical waste while providing home health services must dispose of

the waste in the same manner that the home and community support services agency disposes of special or medical waste generated in the agency's office location.

(b) A home and community support services agency shall provide both verbal and written instructions to the agency's client regarding the proper procedure for disposing of sharps. Sharps include hypodermic needles; hypodermic syringes with attached needles; scalpel blades; razor blades, disposable razors, and disposable scissors used in medical procedures; and intravenous stylets and rigid introducers.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.0201. REGISTRATION FOR EVACUATION; DISASTER PREPAREDNESS. A home and community support services agency shall:

- (1) assist clients as necessary with registering for disaster evacuation assistance through 2-1-1 services provided by the Texas Information and Referral Network; and
- (2) counsel clients as necessary regarding disaster preparedness.

Added by Acts 2009, 81st Leg., R.S., Ch. 459 (H.B. [2558](#)), Sec. 1, eff. June 19, 2009.

#### **SUBCHAPTER B. PERMITS TO ADMINISTER MEDICATION**

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community support services agency unless the person:

- (1) holds a license under state law that authorizes the person to administer medication;
- (2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;
- (3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or



(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding adopted under Section 142.016.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 65, eff. September 1, 2007.

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 4, eff. June 19, 1990. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.009, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 66, eff. September 1, 2007.

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

- (1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;
- (2) curricula to train a home health medication aide;
- (3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;
- (4) the acts and practices that are allowed or prohibited to a permit holder; and
- (5) minimum standards for on-site supervision of a permit holder by a registered nurse.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 20, eff. Sept. 1, 1993.

Sec. 142.024. HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS.

(a) An application for the approval of a home health medication aide training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a home health medication aide training program that meets the minimum standards adopted under Section 142.023. The department may review the approval annually.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 21, eff. Sept. 1, 1993.

Sec. 142.025. ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the

department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 142.023;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) A permit is valid for one year and is not transferable.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 22, 23, eff. Sept. 1, 1993.

Sec. 142.026. FEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:

(1) \$25 for a combined permit application and examination fee; and

(2) \$15 for a renewal permit application fee.

(b) Fees received under this section may only be appropriated to the department to administer this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 24, eff. Sept. 1, 1993.

Sec. 142.027. VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS.

(a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) deny, suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 142.028, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the

department's rules for a formal hearing and by Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.028. EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) The department shall issue an order to suspend a permit issued under Section 142.025 if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 26, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.029. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY.

(a) A person commits an offense if the person knowingly administers medication to a client of a home and community support services agency and the person is not authorized to administer the medication under Section 142.021 or 142.022.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 27, eff.

Sept. 1, 1993.

Sec. 142.030. DISPENSING DANGEROUS DRUGS OR CONTROLLED SUBSTANCES; CRIMINAL PENALTY. (a) A person authorized by this subchapter to administer medication to a client of a home and community support services agency may not dispense dangerous drugs or controlled substances without complying with Subtitle J, Title 3, Occupations Code.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 28, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 14.779, eff. Sept. 1, 2001.

#### CHAPTER 143. INDUSTRIAL HOMEWORK

Sec. 143.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person who, directly, indirectly, or through an employee, agent, independent contractor, or any other person, delivers to another person materials for articles that are:

(A) to be manufactured in a home and returned to the employer; and

(B) not for the personal use of the employer or a member of the employer's family.

(2) "Home" means a room, house, apartment, or other premises, whichever is most extensive, that is used in whole or in part as a dwelling.

(3) "Industrial homework" means the manufacture, in a home, of articles for an employer.

(4) "Manufacture" includes preparation, alteration, repair, or finishing, in whole or in part, for profit or compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.002. EMPLOYER'S PERMIT REQUIRED. (a) An employer may not deliver materials for industrial homework to any person in this state without an employer's permit issued by the board.

(b) If the employer is not a resident of this state, the

employer's agent must hold the employer's permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.003. EMPLOYER'S PERMIT APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for an employer's permit in the form prescribed by board rule.

(b) The application must be accompanied by a \$50 permit fee.

(c) An employer's permit is valid for one year from the date of issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.004. SUSPENSION OR REVOCATION OF EMPLOYER'S PERMIT. The board may suspend or revoke an employer's permit if the board finds that the employer has violated this chapter or has failed to comply with a provision of the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.005. HOMEWORKER'S CERTIFICATE REQUIRED. (a) A person may not engage in industrial homework without a homemaker's certificate issued by the board.

(b) A homemaker's certificate is valid only for work performed by the certificate holder in the certificate holder's home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.006. HOMEWORKER'S CERTIFICATE APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for a homemaker's certificate in the form prescribed by board rule. Each applicant must present a health certificate or other evidence of good health as required by the board.

(b) The application must be accompanied by a fee in an amount set by the board, but not to exceed 50 cents.

(c) A homemaker's certificate is valid for one year from the date of issuance.

(d) The board may not issue a homeworker's certificate to a person who:

- (1) is younger than 15 years of age;
- (2) suffers from a communicable disease; or
- (3) lives in a home that is not clean, sanitary, and free from communicable diseases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.007. SUSPENSION OR REVOCATION OF HOMEWORKER'S CERTIFICATE. The board may suspend or revoke a homeworker's certificate if the board finds that the industrial homeworker:

- (1) is performing industrial homework in violation of the conditions under which the certificate was issued or in violation of this chapter; or
- (2) has allowed a person who does not hold a homeworker's certificate to assist the homeworker in performing the industrial homework.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.008. PROHIBITION ON ISSUANCE OF PERMIT OR CERTIFICATE. The board may not issue an employer's permit or a homeworker's certificate to authorize industrial homework or the delivery of materials for industrial homework if the board determines that the industrial homework:

- (1) is injurious to the health or welfare of industrial homeworkers in that industry or to the public; or
- (2) makes it unduly difficult to maintain or enforce health standards established by law or rule for factory workers in that industry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.009. ORDER PROHIBITING CERTAIN INDUSTRIAL HOMEWORK; HEARING. (a) The board by order shall prohibit industrial homework in a certain industry and shall require employers in that industry to stop delivering in this state any materials for that industrial

homework if the board determines, after investigation, that the industrial homework may not be continued in that industry without injuring the health and welfare of industrial homeworkers in that industry or of the public.

(b) Before adopting an order under Subsection (a), the board must hold a public hearing at which an opportunity to be heard must be afforded to any person having an interest in the subject matter of the hearing, including:

- (1) an employer or a representative of employers; or
- (2) an industrial homeworker or a representative of industrial homeworkers.

(c) The board must give public notice of the hearing:

- (1) not later than the 30th day before the date on which the hearing is held; and
- (2) in a manner determined by the board.

(d) The board shall hold the hearing in the place the board determines to be most convenient to the employers and industrial homeworkers affected by the order.

(e) The board shall determine the effective date of the order, which may not be less than 90 days after the date of its adoption.

(f) After an order becomes effective, a person holding an employer's permit may not deliver materials for the industrial homework prohibited by the order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.010. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules necessary to implement this chapter and shall enforce this chapter.

(b) The board or the board's representative shall conduct all inspections and investigations necessary to enforce this chapter.

(c) The board or the board's representative may:

- (1) administer oaths;
- (2) take affidavits;
- (3) issue subpoenas;
- (4) compel the attendance of witnesses and the production of books, contracts, documents, or any other evidence;
- (5) hear testimony under oath; and
- (6) take depositions of witnesses who reside in this state



or outside this state in the manner provided by law for similar depositions in civil actions in a justice court.

(d) A subpoena or commission to take testimony shall be issued under the seal of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.011. PROHIBITION ON CERTAIN DELIVERIES BY EMPLOYER. An employer may not deliver or cause to be delivered any materials for industrial homework to a person who does not possess an employer's permit or a homemaker's certificate issued in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.012. RECORD REQUIREMENTS; INVESTIGATION. (a) A person who holds an employer's permit may not deliver or cause to be delivered or received materials for industrial homework or receive an article as a result of industrial homework unless the employer keeps a record of:

- (1) the persons engaged in industrial homework on materials delivered by that employer;
- (2) the places where those persons work;
- (3) the articles that those persons have manufactured;
- (4) the agents or contractors to whom the employer has delivered materials for industrial homework; and
- (5) the persons from whom the employer has received materials for industrial homework.

(b) The employer shall maintain and report the information in the manner prescribed by board rule and on forms that the board may provide.

(c) The information and records required by this section may be used by the board only to enforce this chapter and may not be published or disclosed except to representatives of the board enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.013. LABEL REQUIREMENT. (a) An employer may not deliver or cause to be delivered materials for industrial homework unless there has been conspicuously affixed to those materials a label or other identifying trademark that bears the employer's name and address printed or written legibly in English.

(b) The label must be affixed to the package or container in which the materials are delivered or are to be kept if it is impossible to affix the label to the materials.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.014. DISPOSITION OF UNLAWFULLY MANUFACTURED ARTICLES.

(a) The board may remove from a home articles that are being manufactured in the home in violation of this chapter and materials used to manufacture those articles.

(b) The board shall give notice of the removal by registered mail to the person whose name and address are affixed to the materials as provided by Section 143.013.

(c) The board may retain the materials or articles until they are claimed by the employer, and if they are not claimed before the 31st day after the date on which the notice is sent, the board may destroy or otherwise dispose of the materials or articles.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 143.015. CRIMINAL PENALTY. (a) An employer commits an offense if the employer:

(1) violates Section 143.002;

(2) refuses to allow the board or its representative to enter the employer's place of business to conduct an investigation authorized by this chapter;

(3) refuses to permit the board or its representative to inspect or copy the employer's records or other documents related to the enforcement of this chapter;

(4) makes an oral statement that the employer is required by the commissioner to make and the statement made is false; or

(5) otherwise violates this chapter or any provision of the employer's permit.

(b) A person commits an offense if the person violates a rule

adopted by the board.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200, imprisonment for not less than 30 days or more than 60 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## CHAPTER 144. RENDERERS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.001. SHORT TITLE. This chapter may be cited as the Texas Renderers' Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.002. DEFINITIONS. In this chapter:

(1) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic animal, or domesticated wild animal, that was not slaughtered for human consumption.

(2) "Dead animal hauler" means a person who collects and disposes of dead animals for commercial purposes.

(3) "Disposal" means the burying, burning, cooking, processing, or rendering of dead animals or of renderable raw materials.

(4) "Employee" means a person who:

(A) is a legal employee of a rendering establishment;  
and

(B) handles or operates rendering equipment, utensils, containers, vehicles, or packaging materials owned or leased by the rendering establishment.

(5) "Nuisance" means any situation or condition that constitutes a nuisance under Section 341.011.

(6) "Person" means an individual, firm, partnership, association, corporation, trust, company, or organization, and includes an agent, officer, or employee of that individual or entity.

(7) "Processing" means an operation or combination of operations through which materials derived from a dead animal or renderable raw material sources are:

(A) prepared for disposal at a rendering establishment;  
(B) stored; or

(C) treated for commercial use or disposition, other than as food for human consumption.

(8) "Related station" means an operation or facility that is necessary or incidental to the operation of a rendering establishment and that is operated or maintained separately from the rendering establishment.

(9) "Rendering business" means the collection, transportation, disposal, or storage of dead animals or renderable raw materials for commercial purposes at locations where dead animals or renderable raw materials are rendered, boiled, processed, stored, transferred, or otherwise prepared, either as a separate business or in connection with any other established business.

(10) "Rendering establishment" means an establishment or part of an establishment, a plant, or any other premises at which dead animals or renderable raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition, other than as food for human consumption. The term includes all other operations and facilities that are necessary or incidental to the establishment.

(11) "Renderable raw material" means any unprocessed or partially processed material of animal or plant origin, other than a dead animal, that is processed by rendering establishments. The term includes:

- (A) animals, poultry, or fish slaughtered or processed for human consumption but that are unsuitable for that use;
- (B) the inedible products and by-products of animals, poultry, or fish slaughtered or processed for human consumption;
- (C) parts from dead animals;
- (D) whole or partial carcasses of dead poultry or fish;
- (E) waste cooking greases; and
- (F) recyclable cooking oil.

(12) "Recyclable cooking oil" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and intended for recycling by being used or reused as:

- (A) an ingredient in a process to make a product; or
- (B) an effective substitute for a commercial product.

(13) "Renderable raw material hauler" means a person who collects or transports renderable raw materials for commercial purposes.

(14) "Transfer station" means a facility at which renderable raw materials are transferred from one conveyance to another.

(15) "Waste cooking grease" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and no longer suitable for such use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 1, eff. Sept. 1, 1999.

Sec. 144.003. CONSTRUCTION OF OTHER LAWS. (a) This chapter does not affect:

(1) Chapter 141, Agriculture Code; or

(2) any state law or a rule of any public regulatory body that relates to the control of water or air pollution.

(b) This chapter does not affect a municipality's power to regulate by ordinance rendering businesses within the boundaries of the municipality. However, each rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler subject to a municipal ordinance shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 2, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. OPERATING LICENSES**

Sec. 144.011. LICENSE REQUIRED. (a) A person may not operate a rendering business, or any adjunct to a rendering business, without having a rendering establishment operating license issued by the department or another appropriate operating license under this section.

(b) A person may not operate or maintain a related station without a related station operating license issued by the department.

(c) A person may not operate or maintain a transfer station without a transfer station operating license issued by the department.

(d) A person may not operate as a dead animal hauler without a dead animal hauler operating license issued by the department unless

the person is an employee of a rendering establishment.

(e) A person may not operate as a renderable raw material hauler without a renderable raw material hauler operating license issued by the department unless the person is an employee of a rendering establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 3, eff. Sept. 1, 1999.

Sec. 144.012. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) Unless the person also performs rendering operations or processes, this chapter does not apply to a person who:

- (1) slaughters, butchers, manufactures, or sells animal flesh or products only for use as food for human consumption;
- (2) transports or disposes of the bodies of animals killed for use as food for human consumption, or the products of those bodies, only for that purpose and use; or
- (3) is an individual and who disposes of the individual's own animal.

(b) This chapter does not apply to a governmental agency that collects, transports, or disposes of dead animals or renderable raw materials.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 4, eff. Sept. 1, 1999.

Sec. 144.013. LICENSE APPLICATION AND ISSUANCE. (a) To be considered by the department for an operating license, a person must submit a sworn application to the department. The application must:

- (1) state whether the applicant intends to operate as a rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler;
- (2) state the location from which the business is to be conducted; and
- (3) include other relevant information required by the department to determine the applicant's compliance with the operating procedures established under Subchapter C.

(b) The application must be accompanied by the application fee.

(c) The department shall issue the appropriate operating

license if, after investigation, it finds that the applicant's operations or proposed operations meet the requirements of Subchapter C.

(d) If the department finds that the applicant's operations or proposed operations do not meet the requirements of Subchapter C, the department shall deny the application and shall notify the applicant in writing of each reason why the applicant fails to meet those requirements. The applicant is entitled to 90 days to meet the requirements, after which the department shall reinvestigate.

(e) If the department determines after reinvestigation that the applicant is not in compliance, the department shall again deny the application and promptly notify the applicant in writing of each reason why the applicant fails to meet the requirements.

(f) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing before the commissioner on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial.

(g) Unless the period is extended by a written agreement between the department and the applicant, the department shall grant or deny a license application not later than the 30th day after the date on which:

- (1) the application and the required fee is filed with the department;
- (2) the period to meet the requirements expires; or
- (3) a hearing on the application denial is conducted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 5, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. OPERATING PROCEDURES FOR ALL LICENSE HOLDERS**

Sec. 144.021. GENERAL REQUIREMENTS FOR OPERATING LICENSES. (a)

Each applicant for or holder of an operating license shall adopt operating procedures that:

- (1) provide for the sanitary performance of rendering operations and processes;
  - (2) prevent the spread of infectious or noxious materials;
- and
- (3) ensure that finished products are free from disease-

producing organisms.

(b) As a condition of licensure, the department may prescribe other reasonable and appropriate construction, operational, maintenance, and inspection requirements to ensure compliance with this chapter and applicable rules of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 6, eff. Sept. 1, 1999.

Sec. 144.022. RECORDS. (a) Each licensed rendering establishment, related station, or dead animal hauler shall have a dead animal log that meets the requirements prescribed by the department. The name of the licensed rendering establishment, related station, or dead animal hauler must be on the front of the log.

(b) When a license holder receives a dead animal, the license holder shall enter the following information in the log:

- (1) the date and time of the pickup of the dead animal;
- (2) the name of the driver of the collection vehicle;
- (3) a description of the dead animal;
- (4) the location of the dead animal, including the county;

and

- (5) the owner of the dead animal, if known.

(c) The license holder shall also keep a record in the log, or in an appendix to the log, of the general route followed in making the collection.

(d) The log is subject to inspection at all reasonable times by the department or a person with written authorization from the department. Repeated or wilful failure or refusal to produce the log for inspection or to permit inspection by persons properly authorized to inspect the log constitutes grounds for license revocation.

(e) This section does not apply to a licensed renderable raw material hauler.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.023. VEHICLES; PERMIT REQUIRED. (a) A vehicle used to transport dead animals or renderable raw materials to or from a rendering establishment must:



(1) be leak-proof and maintained in a manner that precludes the creation of a nuisance; and

(2) comply with each applicable requirement for operation on the public roads or highways, including applicable insurance requirements and gross vehicle weight limitations.

(b) A collection vehicle shall be held to a minimum number of stops, and the stops shall be brief, while traveling to the establishment with dead animals or renderable raw materials. Each collection vehicle shall be washed and sanitized at the end of each day's operations.

(c) A truck bed used to transport dead animals or renderable raw materials shall be thoroughly washed and sanitized before use for the transport of finished rendered products. A truck bed used to transport dead animals or renderable raw materials to a rendering establishment, or to transfer finished rendered products from an establishment, shall, before being used to transport any product intended for human consumption, be thoroughly sanitized with a bactericidal agent that is determined by the department to be safe in a rendering establishment. A truck bed may not be used to transport dead animals or renderable raw materials at the same time the truck bed or any part of the truck bed is used to transport any product intended for human consumption, notwithstanding the manner in which part of the truck bed is sealed or separated from the remainder of the bed.

(d) The owner of a vehicle may not operate the vehicle on public roads and highways to haul dead animals or renderable raw materials unless the owner holds a permit for the vehicle issued by the department. To obtain a permit for the vehicle from the department, the owner must provide to the department:

(1) the owner's name and address;

(2) a description of the operations to be performed under the registration;

(3) the year, make, model, license plate number, and manufacturer's vehicle identification number for the vehicle;

(4) a list of names of drivers employed by the hauler to drive the vehicle and their driver's license numbers; and

(5) any other information required by the department.

(e) The department may require that a dead animal or renderable raw material hauling vehicle conspicuously display a permit decal issued by the department and the number and license holder's name for

any operating license required under Section 144.011. As a condition of issuance and maintenance of the permit, the department may require that the vehicle comply with any other construction, operational, maintenance, inspection, and marking requirements as prescribed by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 7, eff. Sept. 1, 1999.

Sec. 144.024. TREATMENT OF DEAD ANIMALS OR RENDERABLE RAW MATERIALS. (a) Dead animals or renderable raw materials received by a rendering establishment shall either be immediately placed in the rendering process or stored for not more than 48 hours in a manner that precludes the creation of a nuisance or a malodorous condition.

(b) Cooking or other dehydration operations shall be conducted in a manner that prevents the survival of disease-producing organisms in the processed material. Adequate and suitable means for the treatment of cooking vapors shall be provided and operated in a manner that controls odors.

(c) All cooked or finished materials shall be kept apart from areas where dead animals or renderable raw materials are kept in a manner that prevents contamination.

(d) If a person intends to use oil or grease as an ingredient in livestock feed or in topical cosmetic products, the person may not contaminate or commingle waste cooking greases or recyclable cooking oils with grease trap waste, grit trap waste, or any other substance that would render the greases or oils harmful or otherwise unsuitable for use as an ingredient in livestock feed or in topical cosmetic products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 8, eff. Sept. 1, 1999.

Sec. 144.025. FLOORS. (a) During operations, the floors in processing areas shall be kept reasonably free from processing wastes, including:

- (1) blood;
- (2) manure;
- (3) scraps;

- (4) grease;
- (5) water;
- (6) dirt; and
- (7) litter.

(b) The floors shall be thoroughly cleaned at the end of each day's operations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.026. WASTE TREATMENT. (a) Waste shall be handled and disposed of in a manner that prevents contamination of:

- (1) the water supply;
- (2) processing equipment;
- (3) packaging materials; and
- (4) finished products.

(b) Liquid waste shall be treated in the manner required by the department and disposed of in a manner approved by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.027. EMPLOYEE FACILITIES. (a) Adequate and convenient toilet facilities for employees shall be located in an establishment.

(b) An adequate number of lavatory facilities for employees to wash their hands shall be provided at convenient locations in the establishment and must be supplied with warm water under pressure and with soap or another detergent.

(c) A drinking water supply approved by the department shall be provided at convenient locations in the establishment for the use of employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.028. HYGIENE REQUIREMENTS. A person engaging in rendering processes or operations shall wear washable garments and accessories and conform to hygienic practices.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.029. SANITARY CONDITIONS REQUIRED. (a) The premises of a rendering establishment shall be kept clean and neat, in good repair, and reasonably free from:

- (1) undue collection of refuse;
- (2) waste materials;
- (3) rodent infestation;
- (4) insect breeding places;
- (5) standing water; and
- (6) other objectionable conditions.

(b) Equipment and utensils shall be provided as necessary for the rendering establishment to conduct operations in a sanitary manner.

(c) Rodents, roaches, and other vermin shall be controlled.

(d) Hide storage facilities shall be in closed areas separate from all other areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.030. COLLECTION CONTAINER REQUIREMENTS. (a) A container in which dead animals or renderable raw materials are accumulated by a producer at collecting points for pickup by a dead animal hauler or renderable raw material hauler must remain on the premises at each collecting point.

(b) The owner of the containers shall maintain the containers in a leak-proof and sanitary condition and shall replace them as necessary.

(c) The transportation, delivery, transfer, loading, and off-loading of dead animals and renderable raw materials shall be performed in a manner that prevents the release of animal parts and spills or leaks of renderable raw materials from containers. A release of dead animal parts or spill or leak of renderable raw materials shall immediately be cleaned up and reported in the log required by Section 144.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 9, eff. Sept. 1, 1999.

Sec. 144.031. PROHIBITED PURCHASES OR SALES. (a) A person may not sell or offer for sale a raw or uncooked dead animal or renderable raw material that contains disease-producing organisms to any person who is not licensed under this chapter.

(b) A person licensed under this chapter may not purchase a dead animal from a dead animal hauler who is not licensed under this chapter.

(c) A person licensed under this chapter may not purchase renderable raw materials from a renderable raw material hauler who is not licensed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 10, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. CONSTRUCTION PERMITS**

Sec. 144.041. PERMIT REQUIRED. (a) Except as provided by Section 144.042, a person may not construct a new rendering establishment or engage in construction involving an addition or replacement at a rendering establishment without a construction permit issued by the department.

(b) Except as provided by Section 144.042, a person may not construct a new related station or engage in construction involving an addition or replacement at a related station without a construction permit issued by the department.

(c) Except as provided by Section 144.042, a person may not construct a new transfer station or engage in construction involving an addition or replacement at a transfer station without a construction permit issued by the department.

(d) Construction at a rendering business is subject to the construction and layout requirements established under Subchapter E.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 11, eff. Sept. 1, 1999.

Sec. 144.042. EXEMPTION FROM PERMIT REQUIREMENT. A construction permit from the department for the construction of a new rendering business or for construction at a rendering business is not required if the cost to the rendering business is less than \$10,000. However, the construction and layout requirements established under

Subchapter E apply to the construction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 12, eff. Sept. 1, 1999.

Sec. 144.043. PERMIT APPLICATION AND ISSUANCE. (a) To receive a construction permit, a person must submit a sworn application to the department. The application must:

(1) describe the type of construction proposed, whether the construction is of a new rendering establishment, related station, or transfer station or additions or replacements;

(2) specify when the proposed construction is to occur;  
and

(3) include other relevant information required by the department to determine the applicant's compliance with the requirements of Subchapter E.

(b) The department shall issue the construction permit if, after investigation, it finds that the proposed construction meets the requirements of Subchapter E.

(c) If the department finds that the applicant's proposed construction does not meet the requirements of Subchapter E, the department shall deny the application and shall notify the applicant in writing of each reason why the applicant fails to meet the requirements. The applicant is entitled to 90 days in which to meet the requirements, after which the department shall reinvestigate.

(d) If the department determines after reinvestigation that the applicant is not in compliance, the department shall again deny the application and notify the applicant in writing of each reason why the applicant fails to meet the requirements.

(e) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing before the commissioner on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial.

(f) Unless the period is extended by a written agreement between the department and the applicant, the department shall grant or deny a permit application not later than the 30th day after the date on which:

(1) the application and the required fees are filed with

the department;

- (2) the period to meet the requirements expires; or
- (3) a hearing on the application denial is conducted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 13, eff. Sept. 1, 1999.

**SUBCHAPTER E. CONSTRUCTION AND LAYOUT REQUIREMENTS FOR RENDERING ESTABLISHMENTS AND RELATED STATIONS**

Sec. 144.051. RENDERING ESTABLISHMENT AND RELATED STATION CONSTRUCTION. (a) All construction of a rendering establishment, related station, or transfer station subject to this chapter must:

- (1) provide for sanitary operations and environmental conditions;
- (2) prevent the spread of disease-producing organisms and infectious or noxious materials; and
- (3) prevent the development of a malodorous condition or a nuisance.

(b) Except to the extent the department grants a written variance from a requirement, each construction permit holder shall comply with the specific requirements established under this subchapter. The department may grant a variance from the requirements of this subchapter if the department determines that construction or operational features established at a rendering establishment will provide protection for public health and safety equivalent to that afforded by the requirements of this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 14, eff. Sept. 1, 1999.

Sec. 144.052. GENERAL CONSTRUCTION AND LAYOUT REQUIREMENTS.

(a) A rendering establishment shall provide sufficient space for:

- (1) the sanitary administration of rendering operations and processes;
- (2) the installation of necessary utility equipment; and
- (3) the installation of processing equipment in a manner that makes the equipment easily accessible for cleaning.

(b) A rendering establishment must be constructed so as to be easily maintained in a sanitary condition and to prevent shelter for

rodents, roaches, and other vermin.

(c) A floor in a rendering establishment must be constructed of good quality concrete, metal, or other equally impervious and easily cleanable material. It must be smooth, graded to drain, and provided with an adequate number of trapped drains or other waste disposal facilities approved by the department. A gutter used to conduct drainage must be constructed and located so it can be easily cleaned and maintained in a sanitary condition.

(d) A wall, partition, or post in a rendering establishment must be finished with a smooth, washable surface of concrete, metal, or other equally impervious and easily cleanable material.

(e) A ceiling, the underside of a roof if used as a ceiling, and any exposed overhead structure in a rendering establishment must have easily cleanable surfaces.

(f) Each exterior wall and roof, and any opening in an outer wall or roof, must protect against the entrance of insects, rodents, and other vermin. An interior wall, partition, post, ceiling, or other overhead structure may not contain crevices or openings that may provide shelter for rodents or insects.

(g) A rendering establishment shall provide a paved area of adequate size for washing and sanitizing trucks. The paved area must be provided with adequate drains that lead to a sanitary sewer system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.053. RESTROOM FACILITIES. (a) A rendering establishment shall provide toilet and dressing room facilities for employees of each sex. The department must approve the design, construction, and equipment of those facilities.

(b) This section does not apply to toilet or dressing room facilities located in the managerial office area of a rendering establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.054. VENTILATION REQUIREMENTS. (a) A rendering establishment shall provide sufficient ventilation to dispel disagreeable odors, condensate, and vapor.



(b) The establishment shall provide ventilating equipment as necessary, including individual fans, vents, and hoods. The establishment shall locate and control mechanical ventilating equipment to prevent contamination of finished products or processing equipment from nearby or preceding operations or other sources.

(c) An employee toilet room or dressing room must be adequately vented to the outside air.

(d) A space heater, gas stove, water heater, or other equipment that emits noxious odors, fumes, or vapors must be vented to the outside air.

(e) An exhaust outlet from a mechanical ventilation device must be conducted to the outside air and must be arranged, placed, and extended to avoid creating a nuisance to adjacent areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.055. WATER SUPPLY. (a) The water supply used by a rendering establishment must be either a public water supply acceptable to the department or a private supply that is located, constructed, and treated, if necessary, to provide water of a safe, sanitary quality and that complies with department requirements.

(b) The establishment's water supply may not be physically connected to any unsafe or questionable supply. Water from an unsafe or questionable supply may be used only for limited purposes, such as fire control or for ammonia condensers. A supply line for unsafe or questionable water must be clearly identified.

(c) Hot and cold water must be conveniently accessible to all parts of the establishment. The water must be under ample pressure, and must be available through outlets and in quantities as necessary to meet effectively the needs of the establishment at all times. The hot water system must have sufficient capacity to furnish ample water with a temperature of at least 180 degrees Fahrenheit during processing and cleanup.

(d) The plumbing system in a rendering establishment must be installed in compliance with state law and applicable local plumbing ordinances, and must be designed, installed, and maintained to protect the establishment's water supply from contamination through cross-connections, back siphonage, back-flow leakage, or condensation. The plumbing system must readily carry away all liquid

wastes.

(e) If necessary to prevent discharge into the drainage system of solid wastes likely to clog the drainage system, liquid wastes containing solid materials must be passed through a separator or indirect-waste receptor that effectively retains the solids before discharge into the drainage system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. PROVISIONS APPLICABLE TO LICENSES AND PERMITS**

Sec. 144.061. CONTENTS AND DISPLAY OF LICENSE OR PERMIT. (a) Each operating license and construction permit must state the name and address of the license holder or permit holder.

(b) The license or permit must be displayed at the place of business named in the license or the place of construction named in the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.062. NOT TRANSFERABLE OR ASSIGNABLE. A license or permit may not be transferred or assigned without the department's approval.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.063. RENEWAL OF LICENSE OR PERMIT. (a) A license or permit is effective until it is relinquished, suspended, or revoked, or it expires.

(b) An operating license is valid for one year and may be renewed annually by the license holder. The department shall set an annual renewal fee.

(c) A license holder may renew a license by paying the renewal fee to the department on or before January 1 of each year. On receipt of the fee, the license is automatically renewed for the next calendar year.

(d) If the renewal fee is not paid before the expiration of the 15th day after the date on which written notice of delinquency is given to the license holder by the department, the license expires

unless the department grants an extension to renew. After an operating license expires, a new application for the license must be submitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 15, eff. Sept. 1, 1999.

Sec. 144.064. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE OR PERMIT; REINSTATEMENT. (a) The commissioner may deny, suspend, or revoke an operating license, construction permit, or renewal of an operating license or construction permit if the commissioner finds that:

(1) the license holder or permit holder has violated this chapter or a rule or order adopted under this chapter or did not exercise due care to prevent the violation; or

(2) a fact or condition exists that would have justified the denial of the license or permit application if the fact or condition was known at the time the original application was filed.

(b) On the discovery of such a violation, the commissioner shall notify the license holder or permit holder of the violation. If the license holder or permit holder fails to make the necessary corrections, the department shall notify the license holder or permit holder of a hearing to suspend or revoke the license or permit.

(c) The commissioner may reinstate a suspended license or permit, or may issue a new license or permit to a person whose license or permit has been revoked, if a ground to deny the original license or permit application does not exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 16, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. ADMINISTRATIVE AND ENFORCEMENT PROVISIONS; PENALTIES**

Sec. 144.071. INSPECTIONS. (a) At least once each year and at other times as the department considers necessary, the department shall inspect the place of business of each operating license holder, the vehicles of each renderable raw material hauler, and the construction site of each construction permit holder if construction is continuing.

(b) The department shall inquire into and inspect the premises,

equipment, and operations of the license holder or permit holder that relate to matters regulated by this chapter.

(c) The department has free access to the place of business, construction site, or vehicle to conduct the inspection.

(d) A license holder or permit holder who unreasonably fails or refuses to cooperate and assist the department in an inspection violates this chapter, and the failure or refusal constitutes a ground for the suspension or revocation of the license or permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 17, eff. Sept. 1, 1999.

Sec. 144.072. FEES. (a) An application for an operating license must be accompanied by an application fee.

(b) An application for a construction permit must be accompanied by a fee. Construction permit fees must be based on the dollar value at the cost to the rendering establishment or related station of the construction.

(c) An application for a vehicle permit under Section 144.023 must be accompanied by a permit fee for each vehicle for which a permit is to be issued.

(d) If an application is withdrawn not later than the fifth day after the date on which it is received by the department, the department shall refund the full amount of the application fee.

(e) The department by rule shall set the fees authorized by this chapter in amounts that allow the department to recover the annual expenditures of state funds by the department in:

- (1) reviewing and acting on a license renewal or registration;
- (2) amending a license, renewal license, or registration;
- (3) inspecting a licensed facility or vehicles and equipment regulated under this chapter; and
- (4) implementing and enforcing this chapter, including a rule or order adopted or a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 18, eff. Sept. 1, 1999.

Sec. 144.073. ACCOUNT. All fees collected under this chapter

are payable to the department and shall be deposited to the credit of the rendering fee account in the general revenue fund. Money in the account may be appropriated only to the department to be used to process and investigate applications filed under this chapter and to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 19, eff. Sept. 1, 1999.

Sec. 144.074. ADOPTION OF RULES. The board may adopt rules consistent with this chapter as necessary for the enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.075. CERTIFICATES; CERTIFIED COPIES. (a) On application by any person and on payment of the associated costs, the department shall furnish a certificate of good standing and a certified copy of any license, permit, rule, or order.

(b) The department shall furnish the certificate or copy under its seal and signed by a representative of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.076. PUBLIC RECORDS. The transcript of any hearing held by the commissioner and findings made by the commissioner or the department under this chapter are public records open to inspection at all reasonable times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.077. HEARINGS AND JUDICIAL REVIEW. (a) A hearing held under this chapter is subject to Chapter 2001, Government Code.

(b) A person aggrieved by a final decision under this chapter is entitled to judicial review.

(c) The manner of judicial review is by substantial evidence review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 20, eff. Sept. 1, 1999.

Sec. 144.078. INJUNCTION. (a) On request of the department, the attorney general may bring an action in any district court of this state that has jurisdiction and venue for an injunction to compel compliance with this chapter or to restrain any actual or threatened violation of this chapter.

(b) The court may enter an order or judgment to award a preliminary or final injunction as it considers appropriate.

(c) The attorney general on behalf of the department may bring an action under Subsection (a) in addition to any other action provided by this chapter and without prejudice to that action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 21, eff. Sept. 1, 1999.

Sec. 144.079. PROHIBITED ACTS. (a) A person may not receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in a building or compartmented area of a building used as a rendering establishment or related station.

(b) A person may not steal, misappropriate, contaminate, or damage recyclable cooking oil or containers of recyclable cooking oil.

(c) A renderer, hauler, or any other person may not:

(1) take possession of recyclable cooking oil from an unlicensed hauler or an employee or contractor of an unlicensed hauler; or

(2) knowingly take possession of stolen recyclable cooking oil.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 22, eff. Sept. 1, 1999.

Sec. 144.080. CRIMINAL PENALTY. (a) A person commits an offense if the person continues any operation or construction subject to regulation under this chapter without obtaining and maintaining an operating license or construction permit.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$50 or more than \$500;
- (2) confinement in the county jail for not more than 30

days; or

- (3) both the fine and confinement.

(c) Each day of violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.081. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates this chapter, a rule adopted by the board under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith;
- (5) such other matters as justice may require.

(c) The penalty may not exceed \$25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 385, Sec. 1, eff. Sept. 1, 1991.

Sec. 144.082. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person notified of a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person notified of the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a

penalty is to be assessed against a person, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1991, 72nd Leg., ch. 385, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 485, Sec. 23, eff. Sept. 1, 1999.

Sec. 144.083. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the commissioner shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:

(A) send the amount of the penalty to the commissioner for placement in an escrow account; or

(B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 385, Sec. 1, eff. Sept. 1, 1991.

Sec. 144.084. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

(1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or



(2) execute a release of the bond if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 385, Sec. 1, eff. Sept. 1, 1991.

Sec. 144.085. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 385, Sec. 1, eff. Sept. 1, 1991.

**CHAPTER 145. TANNING FACILITIES**

Sec. 145.001. SHORT TITLE. This chapter may be cited as the Tanning Facility Regulation Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Sec. 145.002. DEFINITIONS. In this chapter:

(1) "Authorized agent" means an employee of the department designated by the commissioner to enforce this chapter.

(2) "Fitzpatrick scale" means the following scale for classifying a skin type, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type	Sunburning and Tanning History
1	Always burns easily; never tans
2	Always burns easily; tans minimally
3	Burns moderately; tans gradually
4	Burns minimally; always tans well
5	Rarely burns; tans profusely
6	Never burns; deeply pigmented

(3) "Health authority" has the meaning assigned by Section 121.021.

(4) "Operator" means an owner of a tanning facility or an agent of an owner of a tanning facility.

(5) "Person" means an individual, partnership, corporation,

or association.

(6) "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease.

(7) "Tanning device" means a device under Section 431.002 and includes any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

(8) "Tanning facility" means a business that provides persons access to or use of tanning devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 1, eff. June 15, 1995;  
Acts 2001, 77th Leg., ch. 473, Sec. 1, eff. Sept. 1, 2001.

Sec. 145.003. EXEMPTION. This chapter does not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Sec. 145.004. COMPLIANCE WITH LAW. (a) A tanning device used by a tanning facility must comply with all applicable federal and state laws and regulations.

(b) The Texas Department of Health may enforce Chapter 431 against a person who adulterates or misbrands a tanning device. The department may investigate a person accused of adulterating or misbranding a tanning device. For the purposes of this subsection, a tanning device is adulterated or misbranded if the tanning device would be an adulterated or misbranded device under Section 431.111 or 431.112, Health and Safety Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 2, eff. June 15, 1995.

Sec. 145.005. CUSTOMER NOTICE; LIABILITY. (a) A tanning

facility shall give each customer a written statement warning that:

- (1) failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;
- (2) overexposure to ultraviolet light causes burns;
- (3) repeated exposure may result in premature aging of the skin and skin cancer;
- (4) abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:
  - (A) foods;
  - (B) cosmetics; or
  - (C) medications, including:
    - (i) tranquilizers;
    - (ii) diuretics;
    - (iii) antibiotics;
    - (iv) high blood pressure medicines; or
    - (v) birth control pills;
- (5) any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device;
- (6) a person with skin that always burns easily and never tans should avoid a tanning device; and
- (7) a person with a family or past medical history of skin cancer should avoid a tanning device.

(b) Compliance with the notice requirement does not affect the liability of a tanning facility operator or a manufacturer of a tanning device.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 473, Sec. 2, eff. Sept. 1, 2001.

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The board by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.

DANGER: ULTRAVIOLET RADIATION

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

A customer may call the Texas Department of Health at (insert toll-free telephone number) to report an alleged injury regarding this tanning facility.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN  
ULTRAVIOLET LAMP OR SUNLAMP.

(b) A tanning facility operator shall also post a warning sign at each tanning device in a conspicuous location that is readily visible to a person about to use the device. The board by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

A customer may call the Texas Department of Health at (insert toll-free telephone number) to report an alleged injury regarding this tanning device.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF  
THIS DEVICE.

(c) The Texas Department of Health shall include with a license application and an application for renewal of a license a description of the design standards required for signs under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 3, eff. June 15, 1995;  
Acts 2001, 77th Leg., ch. 473, Sec. 3, eff. Sept. 1, 2001.

Sec. 145.007. PROHIBITED CLAIMS ABOUT SAFETY. A tanning facility operator may not claim or distribute promotional materials that claim that using a tanning device is safe or free from risk or that using a tanning device will result in medical or health benefits.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 4, eff. June 15, 1995.

Sec. 145.008. OPERATIONAL REQUIREMENTS. (a) A tanning facility shall have an operator present during operating hours. The operator must:

- (1) be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility;
  - (2) instruct, inform, and assist each customer in the proper use of the tanning devices;
  - (3) complete and maintain records required by this chapter;
- and
- (4) explain or otherwise inform each customer initially using the tanning facility of:
    - (A) the potential hazards of and protective measures necessary for ultraviolet radiation;
    - (B) the requirement that protective eyewear be worn while using a tanning device;
    - (C) the possibility of photosensitivity or of a photoallergic reaction to certain drugs, medicine, or other agents when a person is subjected to the sun or ultraviolet radiation;
    - (D) the correlation between skin type and exposure time;
    - (E) the maximum exposure time to the facility's devices;

- (F) the biological process of tanning; and
- (G) the dangers of and the necessity to avoid

overexposure to ultraviolet radiation.

(b) Before each use of a tanning device, the operator shall provide with each device clean and properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The protective eyewear shall be located in the immediate area of each tanning device and shall be provided without charge to each user of a tanning device. The operator may not allow a person to use a tanning device if that person does not use protective eyewear that meets the requirements of the United States Food and Drug Administration. The operator also shall show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

(c) The tanning facility operator shall clean and properly sanitize the body contact surfaces of a tanning device after each use of the tanning device.

(d) The tanning facility shall use a timer with an accuracy of at least plus or minus 10 percent of the maximum timer interval of the tanning device. The operator shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. A timer shall be located so that a customer cannot set or reset the customer's exposure time. The operator shall control the temperature of the customer contact surfaces of a tanning device and the surrounding area so that it may not exceed 100 degrees Fahrenheit.

(e) Before a customer uses a tanning facility's tanning device for the first time and each time a person executes or renews a contract to use a tanning facility, the person must provide photo identification and sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use protective eyewear.

(f) To ensure the proper operation of the tanning equipment, a tanning facility may not allow a person younger than 18 years of age to use a tanning device.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1381, Sec. 2, eff. September 1, 2013.

(h) When a tanning device is in use by a person, another person may not be allowed in the area of the tanning device.

(i) A record of each customer using a tanning device shall be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The executive commissioner of the Health and Human Services Commission by rule shall prescribe the form and content of the records. The record shall include:

- (1) the date and time of the customer's use of a tanning device;
- (2) the length of time the tanning device was used;
- (3) any injury or illness resulting from the use of a tanning device;
- (4) any written informed consent statement required to be signed under Subsection (e);
- (5) the customer's skin type, as determined by the customer by using the Fitzpatrick scale for classifying a skin type;
- (6) whether the customer has a family history of skin cancer; and
- (7) whether the customer has a past medical history of skin cancer.

(j) An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The board by rule shall prescribe the form and content of the log. The log shall include each:

- (1) alleged injury;
- (2) use of a tanning device by a customer not wearing protective eyewear;
- (3) mechanical problem with a tanning device; and
- (4) customer complaint.

(k) The Texas Department of Health shall provide to each applicant for an original or renewal license a written copy of the Fitzpatrick scale.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 5, eff. June 15, 1995;  
Acts 2001, 77th Leg., ch. 473, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 626 (H.B. [1310](#)), Sec. 1, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. [329](#)), Sec. 1, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. 329), Sec. 2, eff. September 1, 2013.

Sec. 145.009. LICENSES. (a) A person may not operate a tanning facility unless the person holds a license issued by the department to operate the facility. Unless revoked or suspended, a license is valid until the first anniversary of the date the license was issued. A separate license is required for each tanning facility.

(b) The license shall be displayed in an open public area of the tanning facility.

(c) The board annually shall renew licenses after application for renewal is made on forms provided by the department for this purpose and after receipt of renewal fees.

(d) The department by rule may adopt a system under which licenses expire on various dates during the year. As part of this system the license fees and the annual renewal fees may be prorated on a monthly basis to reflect the actual number of months the license is valid.

(e) The department may revoke, suspend, suspend on an emergency basis, or probate by an emergency order of the commissioner, or the commissioner's designee a license to operate a tanning facility for:

(1) a failure to pay a license fee or an annual renewal fee for a license;

(2) an applicant's acquisition or attempted acquisition of a license by fraud or deception;

(3) a violation of this chapter;

(4) a violation of a rule of the department adopted under this chapter; or

(5) a violation of an order issued under this chapter.

(f) A license issued under this chapter shall be returned to the department if the tanning facility:

(1) ceases to operate as a business permanently;

(2) changes the ownership of the tanning facility;

(3) changes the location of the tanning facility; or

(4) changes the name of the business under which the tanning facility operates.



Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 6, eff. June 15, 1995.

Sec. 145.0095. ISSUANCE OF LICENSE FOR CERTAIN FACILITIES PROHIBITED. (a) The department may not issue or renew a license under Section 145.009 with respect to a facility that:

(1) is operated under a license or permit as a sexually oriented business issued in accordance with Section 243.007, Local Government Code;

(2) offers, as its primary business, a service or the sale, rental, or exhibition of a device or other item that is intended to provide sexual stimulation or sexual gratification to a customer; or

(3) is owned or operated by a person who has been convicted of an offense under Chapter 21 or 43, Penal Code, or Section 71.02(a)(3), Penal Code.

(b) The department shall revoke a license issued with respect to a facility if the license may not be renewed under Subsection (a).

(c) For purposes of this section, a person has been convicted of an offense if the person receives community supervision for the offense after sentence is imposed or after the person enters a plea of guilty or nolo contendere and is placed on deferred adjudication.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 7, eff. June 15, 1995.

Sec. 145.0096. CERTAIN ADVERTISING PROHIBITED. (a) A business described by Section 145.0095(a)(1) or (2) may not use the word "tan" or "tanning" in a sign or any other form of advertising.

(b) A person commits an offense if the person violates Subsection (a). Except as provided by Subsection (c), an offense under this subsection is a Class C misdemeanor.

(c) If it is shown on the trial of an offense under Subsection (b) that the person has previously been convicted of an offense under that subsection, the offense is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 7, eff. June 15, 1995.

Sec. 145.010. FEES. (a) The board shall collect a fee for:

(1) a license issued or renewed; or

(2) a license that is modified.

(b) The board may charge prorated or annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover not less than 50 percent of the costs to the department in:

(1) reviewing and acting on a license application;

(2) modifying or renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this chapter or rules

relating to this chapter.

(d) The department shall use not less than 50 percent of the license fees collected for inspecting a licensed facility or enforcement of this chapter or a rule relating to this chapter. The remainder of the license fees collected shall be used to administer this chapter.

(e) A license fee received by the department shall be deposited in the state treasury to the credit of the food and drug registration fund. The fees are dedicated to the department for the administration and enforcement of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 684, Sec. 8, eff. June 15, 1995.

Sec. 145.011. RULES; INSPECTION. (a) The board may adopt rules as necessary to implement this chapter.

(b) The commissioner or an authorized agent may inspect a tanning facility at any reasonable time to determine compliance with this chapter.

(c) A person who is required to maintain records under this chapter or a person in charge of the custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority access to copy or verify the records at reasonable times.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 684, Sec. 9, eff. June 15, 1995.

Sec. 145.012. EMERGENCY ORDER. (a) The commissioner or the commissioner's designee may issue an emergency order relating to the

operation of a tanning facility in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) operation of the tanning facility creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue an emergency order without notice or a hearing if the commissioner or the designee determines notice or a hearing is not practical under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under rules of the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 10, eff. June 15, 1995.

Sec. 145.0121. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the commissioner may request the attorney general or the district or county attorney or the municipal attorney of a municipality in the jurisdiction where the violation is alleged to have occurred or may occur to institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy if the department shows that the person has engaged in or is engaging in a violation;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed \$25,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

- (3) the hazard to the health and safety of the public;
- (4) the demonstrated good faith of the person charged; and
- (5) any other matter as justice may require.

(d) Venue for a suit brought under this section is the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner or the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section shall be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general shall be used by the attorney general.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 11, eff. June 15, 1995.

Sec. 145.0122. ADMINISTRATIVE PENALTY. (a) The board or the board's designee may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(c) The amount of the penalty shall be based on:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) the hazard the violation caused or will cause to the health and safety of the public;
- (4) the demonstrated good faith of the person charged with a violation; and
- (5) any other matter that justice may require.

(d) If the commissioner or the commissioner's designee determines a violation has occurred, the commissioner or the commissioner's designee may issue to the board or the board's designee a report that states the facts on which the determination is

based and the commissioner's or the designee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or the commissioner's designee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner or the commissioner's designee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the department. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review in a district court in Travis County contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(1) If the commissioner receives a copy of an affidavit under Subsection (k)(2), the commissioner may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by

Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 11, eff. June 15, 1995.

Sec. 145.013. CRIMINAL PENALTY. (a) A person, other than a customer, commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 684, Sec. 12, eff. June 15, 1995.

Sec. 145.015. TOLL-FREE NUMBER. The department shall maintain a toll-free telephone number that a customer may call to report an alleged injury regarding a tanning device or incurred at a tanning

facility.

Added by Acts 2001, 77th Leg., ch. 473, Sec. 5, eff. Sept. 1, 2001.

Sec. 145.016. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may not disclose a customer record required by Section 145.008(i).

(b) An operator or other person may disclose a customer record:

- (1) if the customer, or a person authorized to act on behalf of the customer, requests the record;
- (2) if the commissioner or an authorized agent or health authority requests the record under Section 145.011;
- (3) if the customer consents in writing to the disclosure to another person;
- (4) in a criminal proceeding in which the customer is a victim, witness, or defendant;
- (5) if the record is requested in a criminal or civil proceeding by court order or subpoena; or
- (6) as otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 473, Sec. 6, eff. Sept. 1, 2001.

#### **CHAPTER 146. TATTOO AND CERTAIN BODY PIERCING STUDIOS**

Sec. 146.001. DEFINITIONS. In this chapter:

(1) "Body piercing" means the creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

(1-a) "Body piercer" means a person who performs body piercing.

(2) "Body piercing studio" means a facility in which body piercing is performed.

(3) "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term includes the application of permanent cosmetics.

(4) "Tattooist" means a person who performs tattooing.

(5) "Tattoo studio" means an establishment or facility in which tattooing is performed.

(6) "Temporary location" means a fixed location at which an



individual operator performs tattooing or body piercing for a specified period of not more than seven days in conjunction with a single event or celebration, where the primary function of the event or celebration is tattooing or body piercing.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 2, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 2, eff. Sept. 1, 1999; Acts  
2003, 78th Leg., ch. 1226, Sec. 1, eff. Sept. 1, 2003.

Sec. 146.002. LICENSE REQUIRED. (a) A person may not conduct, operate, or maintain a tattoo studio unless the person holds a license issued by the department to operate the tattoo studio. Except as provided by Section 146.0025, a person may not conduct, operate, or maintain a body piercing studio unless the person holds a license issued by the department to operate the body piercing studio.

(b) Except as provided by Section 146.0025, a person may not practice tattooing or body piercing at a temporary location unless the person holds a temporary location license for tattooing or body piercing, as appropriate, issued by the department.

(c) The license must be displayed in a prominent place in the tattoo or body piercing studio or temporary location.

(d) Tattooing and body piercing are permitted only at a location that is in compliance with this chapter and rules adopted under this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 3, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.0021. EMPLOYMENT OF TATTOOISTS AND BODY PIERCERS; REGISTRATION REQUIRED. A tattoo studio or a body piercing studio may not employ a tattooist or a body piercer unless the person is registered with the department under this chapter.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 2, eff. Sept. 1, 2003.

Sec. 146.0025. EXEMPTIONS FROM LICENSING REQUIREMENTS; EAR

PIERCING ESTABLISHMENTS EXEMPT. (a) This chapter does not apply to:

- (1) a medical facility licensed under other law;
- (2) an office or clinic of a person licensed by the Texas State Board of Medical Examiners;
- (3) a person who performs only ear piercing; or
- (4) a facility in which only ear piercing is performed.

(b) A person who conducts, operates, or maintains a facility, office, or clinic described by Subsection (a)(1), (2), or (4) is not required to obtain a license under this chapter to operate that facility.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.003. LICENSE APPLICATION. (a) To receive a tattoo studio license, body piercing studio license, or temporary location license, a person must submit a signed, verified license application to the department on a form prescribed by the department and must submit an application fee. In addition, the person must submit evidence from the appropriate zoning officials in the municipality or county in which the studio is proposed to be located that confirms that the studio is in compliance with existing zoning codes applicable to the studio.

Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 516, Sec.

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(b) On receipt of a tattoo studio or body piercing studio license application, the department shall inspect the proposed tattoo or body piercing studio to determine compliance with this chapter and rules adopted by the board under this chapter. In addition, the department shall request confirmation from the appropriate building and zoning officials in the municipality or county in which the studio is proposed to be located to determine compliance with existing building and zoning codes applicable to the studio. The department may issue a license for a tattoo or body piercing studio after determining that the studio is in compliance with applicable statutes, rules, and building and zoning codes.

Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 1528,  
Sec. 1

(b) The department may issue a license or temporary location license for a tattoo studio after determining that the studio is in

compliance with applicable statutes, rules, and zoning codes.

(c) Repealed by Acts 1999, 76th Leg., ch. 1528, Sec. 9(1), eff. September 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 4, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 4, eff. Sept. 1, 1999; Acts  
1999, 76th Leg., ch. 1528, Sec. 1, 9(1), eff. Sept. 1, 1999.

Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio or body piercing studio license is valid for one year from the date of issuance. A temporary tattooing or body piercing location license is valid for a specified period not to exceed seven days.

(b) A tattoo studio or body piercing studio license may be renewed annually on payment of the required renewal fee.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 5, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 5, eff. Sept. 1, 1999.

Sec. 146.0041. GENERAL GROUNDS FOR REFUSAL. (a) The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule of the department adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule of the department adopted

under this chapter;

(6) the applicant is a minor; or

(7) the applicant does not provide an adequate building available at the address for which the license is sought before conducting any activity authorized by the license.

(b) The department may refuse to issue or renew, for a period of one year from the date of application for the initial or renewal license, a tattoo studio or body piercing studio license for a premises where a shooting, stabbing, or other violent act or an offense involving drugs occurred that involved a license applicant, license holder, or registrant under this chapter or a patron or employee of the studio.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.

Sec. 146.0042. REVOCATION OR SUSPENSION OF LICENSE. (a) In Subsection (b), "license holder" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

(b) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(1) the license holder has been finally convicted of a violation of this chapter;

(2) the license holder violated a provision of this chapter or a rule of the department adopted under this chapter;

(3) the license holder made a false or misleading statement in connection with the original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the department;

(4) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule of the department adopted under this chapter;

(5) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(6) the license holder was intoxicated on the licensed premises.

(c) The department may refuse to renew or, after notice and hearing, suspend for not more than 60 days or revoke a tattoo studio or body piercing studio license if the department finds that the license holder is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 151, Tax Code, or is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

(d) If a license holder cannot be located for any notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the licensed premises.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.

Sec. 146.005. FEES. (a) The board shall set license and registration fees and license and registration renewal fees in amounts necessary to administer this chapter.

(b) Fees collected under this section may only be appropriated to the department to administer and enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 4, eff. Sept. 1, 2003.

Sec. 146.006. CHANGE OF LOCATION. (a) A person holding a tattoo studio or body piercing studio license under this chapter who intends to change the location of the tattoo or body piercing studio shall notify the department in writing of that intent not less than 30 days before the change is to occur. The notice shall include the street address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the change of location is complete, a person holding a license under this chapter shall notify the department in writing and shall verify the information submitted under Subsection (a).

(c) Notice under this section must be sent to the department's central office by certified mail, return receipt requested.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 6, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.007. COMPLIANCE WITH CHAPTER AND RULES. (a) A person who owns, operates, or maintains a tattoo or body piercing studio or practices tattooing or body piercing at a temporary location shall comply with this chapter, Chapter 431, and rules adopted under this chapter and Chapter 431.

(b) The board, commissioner, and department may enforce Chapter 431 in relation to a drug, cosmetic, or device that is used in tattooing and that is not otherwise subject to that chapter as if the drug, cosmetic, or device satisfied the definitions assigned those terms under Section 431.002.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 7, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 7, eff. Sept. 1, 1999; Acts  
1999, 76th Leg., ch. 1528, Sec. 2, eff. Sept. 1, 1999.

Sec. 146.008. ASEPTIC TECHNIQUES. A person who owns, operates, or maintains a tattoo or body piercing studio and each tattooist or person who performs body piercing who works in the studio or at a temporary location shall take precautions to prevent the spread of infection, including:

(1) using germicidal soap to clean the hands of the tattooist or person who performs body piercing and the skin area of the client to be tattooed or pierced;

(2) wearing clean apparel and rubber gloves;

(3) using sterile tools and equipment as provided by Section 146.011; and

(4) keeping the tattoo or body piercing studio or temporary location in a sanitary condition.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 8, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 516, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.010. SANITATION REQUIREMENTS. (a) The board by rule shall establish sanitation requirements for tattoo and body piercing studios and any other necessary requirements relating to the building or part of the building in which a tattoo or body piercing studio is located.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall comply with the rules adopted under this section.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 10, eff. Sept. 1, 1999.

Sec. 146.011. TOOLS AND EQUIPMENT. (a) A tattooist or person who performs body piercing shall use tools and equipment for tattooing or body piercing that have been properly sterilized and kept in a sterile condition.

(b) A tattooist or person who performs body piercing shall sterilize tools and equipment used on one client before using them on another client.

(c) Tools and equipment shall be sterilized by:

- (1) the use of a dry heat sterilizer; or
- (2) steam pressure treatment in an autoclave.

(d) All needles and instruments shall be kept in a clean, dust-tight container when not in use.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1999, 76th Leg., ch. 516, Sec. 11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS. (a) A tattooist may not tattoo:

- (1) except as provided by Subsection (a-1), a person younger than 18 years of age; or
- (2) a person who the tattooist suspects is under the influence of alcohol or drugs.

(a-1) A tattooist may tattoo a person younger than 18 years of age if:

- (1) the tattoo will cover a tattoo that contains:

(A) obscene or offensive language or symbols;  
 (B) gang-related names, symbols, or markings;  
 (C) drug-related names, symbols, or pictures; or  
 (D) other words, symbols, or markings that the person's parent or guardian considers would be in the best interest of the person to cover; and

(2) the person has obtained consent from the person's parent or guardian to cover the tattoo.

(b) The consent required by Subsection (a-1) may be satisfied by the individual's parent or guardian:

(1) being physically present at the tattoo studio at the time the tattooing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the tattooing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the tattooing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the tattoo.

(c) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a tattoo studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
 Amended by Acts 1995, 74th Leg., ch. 936, Sec. 11, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1226, Sec. 5, eff. Sept. 1, 2003.

Sec. 146.0124. BODY PIERCING PROHIBITED FOR CERTAIN PERSONS. A person may not perform body piercing if the person suspects that the individual on whom the body piercing is to be performed is under the influence of alcohol or drugs.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999.

Sec. 146.0125. BODY PIERCING PROHIBITED WITHOUT PARENTAL CONSENT; EXCEPTION. (a) A person may not perform body piercing on



an individual younger than 18 years of age without the consent of a parent, managing conservator, or guardian of the individual.

(b) The consent must indicate the part of the person's body that may be pierced.

(c) The consent required by Subsections (a) and (b) may be satisfied by the individual's parent or guardian:

(1) being physically present at the body piercing studio at the time the body piercing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the body piercing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the body piercing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the body piercing.

(d) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a body piercing studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 6, eff. Sept. 1, 2003.

Sec. 146.0126. TONGUE SPLITTING PROHIBITED. (a) For purposes of this section, "tongue splitting" means cutting a human tongue into two or more parts.

(b) A person may not perform tongue splitting.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 7, eff. Sept. 1, 2003.

Sec. 146.013. MAINTENANCE OF RECORDS. (a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by the board. A person who performs body piercing shall maintain a permanent record of each individual whose body is pierced by the person for a period established by the board.

(b) The record shall be available for inspection on the request

of the department.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1999, 76th Leg., ch. 516, Sec. 13, eff. Sept. 1, 1999.

Sec. 146.014. REPORT OF INFECTION. A person who owns, operates, or maintains a tattoo or body piercing studio shall report to the department any infection resulting from tattooing or body piercing as soon as it becomes known.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 14, eff. Sept. 1, 1999.

Sec. 146.015. RULES; ENFORCEMENT. (a) The board shall adopt rules to implement this chapter.

(b) The department shall enforce this chapter and the rules adopted under this chapter and may issue orders to compel compliance.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.

Sec. 146.016. INSPECTIONS. (a) The department shall inspect a tattoo or body piercing studio to determine if the studio complies with this chapter and the rules adopted under this chapter.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall allow inspection of the studio by the department at any time the studio is in operation.

(c) The department shall inform the person who owns, operates, or maintains a tattoo or body piercing studio of any violation discovered by the department under this section and shall give the person a reasonable period in which to take necessary corrective action.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 13, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 15, eff. Sept. 1, 1999.

Sec. 146.017. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may refuse to issue a license or suspend or revoke a license issued under this chapter if an applicant or license holder does not comply with this chapter or a rule adopted or order issued under this chapter.

(b) The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the board's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code. A person may appeal a final decision of the department as provided by that chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 5, eff. Sept. 1, 1999.

Sec. 146.018. OFFENSE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1528, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.019. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

- (3) the history of previous violations;
- (4) the amounts necessary to deter future violations;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) The commissioner who determines that a violation has occurred shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the commissioner by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner's order is final as provided by Subchapter F, Chapter 2001, Government Code, the

person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner who receives a copy of an affidavit under Subsection (k)(2) of this section may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

(s) Any duty of the commissioner under this section may be delegated to employees of the department.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (55), (59),  
eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 7, eff.  
Sept. 1, 1999.

Sec. 146.020. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the commissioner may request the attorney general or the district attorney, county attorney, or municipal attorney in the jurisdiction where the

violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed \$5,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) any other matter as justice may require.

(d) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 1999, 76th Leg., ch. 1528, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.021. EMERGENCY ORDERS. (a) The commissioner may, with or without notice or hearing, issue an emergency order relating to regulation under this chapter of a tattooist or body piercer, or to the operation of a tattoo studio or body piercing studio, if the commissioner finds:

(1) that:

(A) the operation of the tattoo studio or body piercing studio or the performance of tattooing or body piercing by the tattooist or body piercer presents an immediate and serious threat to human health; or

(B) a shooting, stabbing, or other violent act or an offense involving drugs:

(i) occurred at the tattoo studio or body piercing studio; or

(ii) involved the tattooist or body piercer; and

(2) that other procedures available to the department to remedy or prevent the threat will result in an unreasonable delay.

(b) If the commissioner issues an emergency order under this section without a hearing, the department shall set a hearing under Chapter 2001, Government Code, to affirm, modify, or set aside the emergency order.

(c) If the license or registration holder cannot be located for a notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the premises of the license holder or the premises where the registration holder is employed.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.

Sec. 146.022. REGISTRATION REQUIRED FOR TATTOOISTS AND BODY PIERCERS. (a) A person may not perform tattooing or body piercing at a tattoo studio or a body piercing studio unless the person holds a registration issued by the department as a tattooist or body piercer under this section.

(b) The registration holder shall display the registration in a prominent place at each tattoo studio or body piercing studio or temporary location where the person is employed.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.

Sec. 146.023. REGISTRATION APPLICATION. To receive a tattooist or body piercer registration, the person must submit:

(1) a signed registration application to the department on a form prescribed by the department;

(2) the application fee; and



(3) proof of completion of a training course approved by the department for tattooists and body piercers that includes not less than six hours related to bloodborne pathogens, infection control, and aseptic technique.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.

Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist or body piercer registration is valid for one year from the date of issuance.

(b) A tattooist or body piercer registration may be renewed annually on:

(1) payment of the required renewal fee; and

(2) submission of proof of completion of a training course approved by the department that includes not less than four hours related to bloodborne pathogens, infection control, and aseptic technique.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.

Sec. 146.025. COURSE OF INSTRUCTION FOR TATTOOISTS AND BODY PIERCERS; RULES; FEES. (a) The department shall prepare or approve a course of instruction sufficient to meet the requirements for application for a registration under Section 146.023 or renewal of a registration under Section 146.024.

(b) The department may approve a course of instruction based on standards set by the department to reasonably ensure that a tattooist or body piercer develops the job skills and knowledge necessary to protect public health and safety.

(c) A prospective course provider must submit to the department for approval the course length and curriculum content for each course offered by the provider. The provider may implement a course length and curriculum content only after department approval.

(d) The department by rule shall set a fee in an amount reasonable and necessary to cover the cost of reviewing the course content and issuing the approval.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.

**SUBTITLE H. PUBLIC HEALTH PROVISIONS**  
**CHAPTER 161. PUBLIC HEALTH PROVISIONS**  
**SUBCHAPTER A. IMMUNIZATIONS**

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information:

(A) a health care provider who administers a vaccine is required to record in a medical record under 42 U.S.C. Section 300aa-25, as amended, including:

(i) the date the vaccine is administered;

(ii) the vaccine manufacturer and lot number of the vaccine;

(iii) any adverse or unexpected events for a vaccine; and

(iv) the name, the address, and if appropriate, the title of the health care provider administering the vaccine; and

(B) specified in rules adopted to implement Section 161.00705.

(1-a) "First responder" means:

(A) any federal, state, local, or private personnel who may respond to a disaster, including:

(i) public health and public safety personnel;

(ii) commissioned law enforcement personnel;

(iii) fire protection personnel, including volunteer firefighters;

(iv) emergency medical services personnel, including hospital emergency facility staff;

(v) a member of the National Guard;

(vi) a member of the Texas State Guard; or

(vii) any other worker who responds to a disaster in the worker's scope of employment; or

(B) any related personnel that provide support services during the prevention, response, and recovery phases of a disaster.

(1-b) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(1-c) "Individual's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(B) a guardian of the individual, if the individual has

been adjudicated incompetent to manage the individual's personal affairs; or

(C) an agent of the individual authorized under a durable power of attorney for health care.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations.

(3) "Electronically," as related to a communication authorized under this chapter, means by e-mail, text message, online communication, or another electronic method of communication approved by the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.01, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 803 (S.B. 1409), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 4.03, eff. September 1, 2009.

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by the board or is otherwise required by law or rule.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Chapter 32, Family Code.

(c) A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.40, eff. Sept. 1, 1997.

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The reminder notice must be addressed to an adult or parent and may not use:

(1) an indication of the marital status of the addressee;

or

(2) the terms "Mr.," "Mrs.," "Miss," or "Ms."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN. (a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted by the board.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the

child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief; or

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The board shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.162, eff. Sept. 1, 2003.

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a) A person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001, 51.9192, or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption. This subsection does not apply to a person claiming the exemption using the Internet-based process under Section 51.9192(d-3), Education Code.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) A person claiming an exemption from a required immunization under this section may only obtain the affidavit form by submitting a written request for the affidavit form to the department.

(d) The department shall develop a blank affidavit form that contains a seal or other security device to prevent reproduction of the form. The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department shall maintain a record of the total number of affidavit forms sent out each year and shall report that information to the legislature each year. The department may not maintain a record of the names of individuals who request an affidavit under this section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.163, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 729 (S.B. 62), Sec. 2, eff. October 1, 2013.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the board have the same powers and duties under this section as those entities have under Sections 38.001 and 51.933 , Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.41, eff. Sept. 1,

1997.

Sec. 161.0051. REQUIRED IMMUNIZATIONS FOR NURSING HOMES. (a) This section applies only to a nursing home that:

(1) is an institution licensed under Chapter 242; and  
(2) serves residents who are elderly persons as defined by Section 242.002.

(b) The board by rule may require nursing homes to offer, in accordance with an immunization schedule adopted by the board, immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the board determines to be:

- (1) caused by infectious agents;
- (2) potentially deadly; and
- (3) preventable by vaccine.

(c) The board by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted by the board:

(1) pneumococcal vaccine to elderly residents; and  
(2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

Added by Acts 1999, 76th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.0052. IMMUNIZATION OF ELDERLY PERSONS BY HOSPITALS, END STAGE RENAL DISEASE FACILITIES, AND PHYSICIANS' OFFICES. (a) In this section:

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

(3) "Hospital" has the meaning assigned by Section 241.003.

(b) The executive commissioner of the Health and Human Services Commission by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the

hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner of the Health and Human Services Commission by rule shall require an end stage renal disease facility to offer, to the extent possible as determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas State Board of Medical Examiners by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(e) Rules adopted under this section must require that:

(1) a hospital, end stage renal disease facility, or physician's office:

(A) offer the influenza vaccine in October and November, and if the vaccine is available, December; and

(B) offer the pneumococcal vaccine year-round; and

(2) a person administering a vaccine:

(A) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(B) administer the vaccine under institution-approved or physician-approved protocols after making an assessment for contraindications; and

(C) permanently document the vaccination in the elderly person's medical records.

(f) In adopting rules under this section, the executive commissioner of the Health and Human Services Commission and the Texas State Board of Medical Examiners shall consider the recommendations of the Advisory Committee on Immunization Practices



of the Centers for Disease Control and Prevention.

(g) Rules adopted under this section may consider the potential for a shortage of a vaccine.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas State Board of Medical Examiners shall make available to physicians' offices, educational and informational materials concerning vaccination against influenza virus and pneumococcal disease.

Added by Acts 2005, 79th Leg., Ch. 368 (S.B. 1330), Sec. 1, eff. September 1, 2005.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO DEPARTMENT.

(a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner of the Health and Human Services Commission by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative about the registry and that registry information may be released under Section 161.00735;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative before any information relating to the individual is included in the

registry;

(4) permit the individual or the individual's legally authorized representative to withdraw consent for the individual to be included in the registry; and

(5) determine the process by which consent is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-1) The written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. The consent is valid until the individual becomes 18 years of age unless the consent is withdrawn in writing or electronically. A parent, managing conservator, or guardian of a minor may provide the consent by using an electronic signature on the minor's birth certificate.

(a-2) An individual's legally authorized representative or the individual, after the individual has attained 18 years of age, may consent in writing or electronically for the individual's information to remain in the registry after the individual's 18th birthday and for the individual's subsequent immunizations to be included in the registry. The written or electronic consent of the minor's legally authorized representative as described by Section 161.0001(1-c)(A) must be submitted to the department before the individual's 18th birthday. The written or electronic consent of the individual or the individual's legally authorized representative as described by Section 161.0001(1-c)(B) or (C) must be submitted to the department not later than the individual's 19th birthday. The consent of the representative or individual is valid until the individual or the individual's legally authorized representative withdraws consent in writing or electronically. The department may not include in the registry the immunization information of an individual who is 18 years of age or older until written or electronic consent has been obtained as provided by this subsection. The department shall coordinate with the Texas Education Agency to distribute materials described in Section 161.0095(a)(2) to students and parents through local school districts.

(a-3) The executive commissioner of the Health and Human Services Commission by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information

in a separate database that is inaccessible by any person other than the department during the one-year period during which an 18-year-old may consent to inclusion in the registry under Subsection (a-2).

(b) Except as provided by Section 161.0071, the immunization registry must contain information on the immunization history that is obtained by the department under:

(1) this section of each individual for whom consent has been obtained in accordance with guidelines adopted under Subsection (a) or (a-3), as applicable;

(2) Section 161.00705 of persons immunized to prepare for or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency;

(3) Section 161.00706 of first responders or their immediate family members; and

(4) Section 161.00735 of persons evacuated or relocated to this state because of a disaster.

(b-1) The department shall remove from the registry information for any individual for whom consent has been withdrawn. The department may not retain individually identifiable information about any individual:

(1) for whom consent has been withdrawn;

(2) for whom a consent for continued inclusion in the registry following the end of the declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency has not been received under Section 161.00705(f);

(3) for whom a request to be removed from the registry has been received under Section 161.00706(e);

(4) for whom consent for continued inclusion in the registry following the end of a disaster has not been received under Section 161.00735(f); or

(5) for whom a request to remove information from the registry has been received under Section 161.00735(g).

(c) A payor that receives data elements from a health care provider who administers an immunization to an individual younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. A payor that receives data elements from a health care provider who

administers an immunization to an individual 18 years of age or older may provide the data elements to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) A health care provider who administers an immunization to an individual younger than 18 years of age shall provide data elements regarding an immunization to the department. A health care provider who administers an immunization to an individual 18 years of age or older may submit data elements regarding an immunization to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for an individual for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsections (a) and (a-3) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to an individual or the individual's legally authorized representative regarding an individual who is due or overdue for a particular type of immunization according to the department's immunization schedule for children or another analogous schedule recognized by the department for individuals 18 years of age or older. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith immunization data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative.

(k) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.780, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1081, Sec. 2.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 1, eff. September 1, 2009.

Sec. 161.00705. RECORDING ADMINISTRATION OF IMMUNIZATION AND MEDICATION FOR DISASTERS AND EMERGENCIES. (a) The department shall maintain a registry of persons who receive an immunization, antiviral, and other medication administered to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization, antiviral, or other medication shall provide the data elements to the department.

(b) The department shall maintain the registry as part of the

immunization registry required by Section 161.007.

(c) The department shall track adverse reactions to an immunization, antiviral, and other medication administered to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization, antiviral, or other medication may provide data related to adverse reactions to the department.

(d) Sections 161.007, 161.0071, 161.0072, and 161.0074 apply to the data elements submitted to the department under this section, unless a provision in those sections conflicts with a requirement in this section.

(e) The executive commissioner of the Health and Human Services Commission by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) Unless an individual or the individual's legally authorized representative consents in writing or electronically to continued inclusion of the individual's information in the registry, the department shall remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e).

(g) The immunization information of a child or other individual received by the department under this section, including individually identifiable information, may be released only:

(1) on consent of the individual or, if a child, the child's parent, managing conservator, or guardian; or

(2) to a state agency or health care provider consistent with the purposes of this subchapter or the purposes of aiding or coordinating communicable disease prevention and control efforts during a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(h) The report required under Section 161.0074 must also include the number of complaints received by the department related

to the department's failure to remove information from the registry as required by Subsection (f).

(i) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 3, eff. September 1, 2009.

Sec. 161.00706. FIRST RESPONDER IMMUNIZATION INFORMATION. (a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may:

(1) request that a health care provider who administers an immunization to the person provide data elements regarding the immunization to the department for inclusion in the immunization registry; or

(2) provide the person's immunization history directly to the department for inclusion in the immunization registry.

(b) A health care provider, on receipt of a request under Subsection (a)(1), shall submit the data elements to the department in a format prescribed by the department. The department shall verify the person's request before including the information in the immunization registry.

(c) The executive commissioner of the Health and Human Services Commission shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in informing first responders about the registry and that registry information may be released under Section 161.00735; and

(3) adopt rules necessary for the implementation of this section.

(d) Except as provided by Section 161.00735, a person's immunization history or data received by the department under this section may be released only on consent of the person or to any health care provider licensed or otherwise authorized to administer

vaccines.

(e) A person whose immunization records are included in the immunization registry as authorized by this section may request in writing or electronically that the department remove that information from the registry. Not later than the 10th day after receiving a request under this subsection, the department shall remove the person's immunization records from the registry.

(f) The report required under Section 161.0074 must also include the number of complaints received by the department related to the department's failure to comply with requests for removal of information from the registry under Subsection (e).

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 2, eff. September 1, 2009.

Sec. 161.00707. INFORMATION AND EDUCATION FOR FIRST RESPONDERS. The department shall develop a program for informing first responders about the immunization registry and educating first responders about the benefits of being included in the immunization registry, including:

(1) ensuring that first responders receive necessary immunizations to prevent the spread of communicable diseases to which a first responder may be exposed during a public health emergency, declared disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency; and

(2) preventing duplication of vaccinations.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual for whom the department has received consent to be included in the registry, the department shall send notice to



the individual or the individual's legally authorized representative disclosing:

- (1) that providers and payors may be sending the individual's immunization information to the department;
- (2) the information that is included in the registry;
- (3) the persons to whom the information may be released under Sections 161.00735(b) and 161.008(d);
- (4) the purpose and use of the registry;
- (5) the procedure to exclude an individual from the registry; and
- (6) the procedure to report a violation if an individual's information is included in the registry after exclusion has been requested or consent has been withdrawn.

(b) On discovering that consent to be included in the registry has not been granted or has been withdrawn, the department shall exclude the individual's immunization records from the registry and any other registry-related department record that individually identifies the individual.

(c) On receipt of a written or electronic request to exclude an individual's immunization records from the registry, the department shall send to the individual or the individual's legally authorized representative who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the individual's records from the registry.

(d) The department commits a violation if the department fails to exclude an individual's immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written or electronic statement from an individual or the individual's legally authorized representative communicating to the department that an individual's information should be excluded from the registry, including a statement on a minor's birth certificate, as a request for exclusion under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 3, eff. September 1, 2009.

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative has reasonable concern that the individual's health care provider is not submitting the immunization history to the department, the individual or the individual's legally authorized representative may provide the individual's immunization history directly to the department to be included in the immunization registry.

(b) The individual or the individual's legally authorized representative may send evidence of the individual's immunization history to the department electronically, by facsimile transmission, or by mail. The evidence may include a copy of:

- (1) the individual's medical record indicating the immunization history;
- (2) an invoice from a health care provider for the immunization; or
- (3) documentation showing that a claim for the immunization was paid by a payor.

(c) The board shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 6, eff. September 1, 2009.

Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) Except as provided by Sections 161.00705 and 161.00735, information that individually identifies an individual that is received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the individual or the individual's legally authorized representative.

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information of an individual to any other person without the written or electronic consent of the individual or the individual's legally authorized representative, except as provided by Chapter 159, Occupations Code, or Section 602.053, Insurance Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.127, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 4, eff. September 1, 2009.

Sec. 161.00735. RELEASE AND RECEIPT OF REGISTRY DATA IN DISASTER. (a) In this section, "disaster" means a disaster declared by the president of the United States, the governor of this state, or the governor of another state.

(b) If the department determines that residents of this state have evacuated or relocated to another state in response to a disaster, the department may release registry data, except registry data obtained under Section 161.00705, to the appropriate health authority of that state or to local health authorities in that state.

(c) The department may receive immunization information from a health authority of another state or from a local health authority in another state if the department determines that residents of that state have evacuated or relocated to this state in response to a disaster. The department shall include information received under

this subsection in the registry. Notwithstanding Section 161.007, the department is not required to obtain written consent for the inclusion in the registry of information received under this subsection.

(d) Immunization information received under Subsection (c) is subject to Section 161.0073, and may not be released except as authorized by this chapter.

(e) The executive commissioner of the Health and Human Services Commission, by rule, shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(f) Unless an individual or, if a child, the child's parent, managing conservator, or guardian consents in writing to continued inclusion of the individual's or child's information in the registry, the department shall remove the immunization records collected under Subsection (c) from the registry on the expiration of the period prescribed by Subsection (e).

(g) If an individual or, if a child, the child's parent, managing conservator, or guardian requests in writing that the individual's or child's information obtained under Subsection (c) be removed from the registry, the department shall remove that information from the registry.

(h) The executive commissioner of the Health and Human Services Commission shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 5, eff. September 1, 2009.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department shall report to the Legislative Budget Board, the governor, the

lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization;

(10) include department recommendations about the best way to use, and communicate with, local registries in the state; and

(11) include ways to increase provider participation in the registry.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section 161.009, the following persons subject to this subchapter that act in compliance with Sections 161.007, 161.00705, 161.00706,

161.0071, 161.0073, 161.0074, and 161.008 are not civilly or criminally liable for furnishing the information required under this subchapter:

- (1) a payor;
- (2) a health care provider who administers immunizations;

and

- (3) an employee of the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.05, eff. September 1, 2007.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.008. IMMUNIZATION RECORD. (a) An immunization record is part of the immunization registry.

(b) An immunization record contains the:

- (1) name and date of birth of the person immunized;
- (2) dates of immunization;
- (3) types of immunization administered; and
- (4) name and address of the health care provider

administering the immunization.

(c) The department may obtain the data constituting an immunization record for an individual from a public health district, a local health department, the individual or the individual's legally authorized representative, a physician to the individual, a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) The department may release the data constituting an immunization record for the individual to:

- (1) any entity that is described by Subsection (c);
- (2) a school or child care facility in which the individual is enrolled; or
- (3) a state agency having legal custody of the individual.

(e) An individual or the individual's legally authorized representative may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning the individual.

(f) A person, including a health care provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an immunization history or data from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual.

(h) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 8, eff. September 1, 2009.

Sec. 161.009. PENALTIES FOR DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person:

- (1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;
- (2) fails to exclude an individual's immunization information in violation of Section 161.0071;
- (3) fails to remove a person's immunization information in violation of Section 161.00705, 161.00706, or 161.00735; or
- (4) negligently uses information in the immunization

registry to solicit new patients or clients or for other purposes that are not associated with immunization or quality-of-care purposes, unless authorized under this section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 5.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 9, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 6, eff. September 1, 2009.

Sec. 161.0095. EDUCATION PROGRAMS AND INFORMATION. (a) The department shall develop:

(1) continuing education programs for health care providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s; and

(2) educational information, for health care providers, health care clinics, hospitals, and any other health care facility that provides health care to children 14 to 18 years of age, relating to the immunization registry and the option for an individual who is 18 years of age or older to consent to submission and retention of the individual's information in the immunization registry.

(b) The department shall establish a work group to assist the department in developing the continuing education programs and educational information. The work group shall include physicians, nurses, department representatives, representatives of managed care organizations that provide health care services under Chapter 533, Government Code, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Added by Acts 2003, 78th Leg., ch. 613, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 10, eff. September 1, 2009.



## Sec. 161.010. IMMUNIZATION EDUCATION; STATEWIDE COALITION.

(a) The department shall establish a continuous statewide education program to educate the public about the importance of immunizing children and the risks and contraindications of an immunization.

(b) The department shall increase coordination among public and private local, regional, and statewide entities that have an interest in immunizations.

Added by Acts 2003, 78th Leg., ch. 125, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0101. INCREASE IMMUNIZATION AWARENESS. (a) The department shall develop new public-private partnerships and work with existing public-private partnership programs, including the Seniors and Volunteers Program For Childhood Immunization, to increase public and private awareness of and support for early childhood immunizations.

(b) The department shall work with the Texas Education Agency to increase immunization awareness and participation among parents of preschool and school-age children by:

(1) jointly applying for federal funds for immunization awareness and vaccination programs; and

(2) creating partnerships with public and private health, service, and education organizations, including parent-teacher associations, the United Way, schools, local businesses, community-based organizations, chambers of commerce, and athletic booster clubs, to increase awareness and participation in the state's early childhood vaccination program.

(c) The department shall work to increase immunization awareness and participation among parents of children in child-care facilities, as defined by Section 42.002, Human Resources Code, in the state's early childhood vaccination program by publishing on the department's website information about the benefits of annual immunization against influenza for children aged six months to five years. The department shall work with the Department of Family and Protective Services and with child-care facilities to ensure that the information is annually distributed to parents in August or September.

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003. Renumbered from Health and Safety Code, Section 161.010 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(44), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 1, eff. June 15, 2007.

Sec. 161.0102. VACCINES FOR CHILDREN PROGRAM; INFLUENZA VACCINES. (a) In this section, "vaccines for children program" means the program operated by the department under authority of 42 U.S.C. Section 1396s, as amended.

(b) The department shall allow each health care provider participating in the vaccines for children program to:

(1) select influenza vaccines from the list of all influenza vaccines that:

(A) are approved by the United States Food and Drug Administration and recommended by the federal Advisory Committee on Immunization Practices; and

(B) are either:

(i) within the limits of the vaccines annually allocated by the Centers for Disease Control and Prevention of the United States Public Health Service to the department for the vaccines for children program; or

(ii) not offered in the annual allocation under Subparagraph (i), but are available from the Centers for Disease Control and Prevention of the United States Public Health Service and for which the Centers for Disease Control and Prevention awards to the department additional funds; and

(2) use both inactivated influenza vaccines and live, attenuated influenza vaccines.

Added by Acts 2007, 80th Leg., R.S., Ch. 397 (S.B. 811), Sec. 1, eff. June 15, 2007.

Sec. 161.01035. PROVIDER CHOICE SYSTEM. (a) The department shall implement a provider choice system for the vaccines for children program operated by the department under authority of 42

U.S.C. Section 1396s and the adult safety net vaccination program.

(b) The department shall ensure that eligible health care providers participating in the vaccines for children program or the adult safety net vaccination program may select any licensed vaccine, including combination vaccines and any dosage forms that:

(1) are recommended by the federal Advisory Committee on Immunization Practices;

(2) are made available to the department by the Centers for Disease Control and Prevention of the United States Public Health Service; and

(3) for adult vaccines, are on the department-approved list of vaccines offered by the adult safety net vaccination program.

(c) For the purposes of this section, "equivalent vaccines" means two or more vaccines, excluding the influenza vaccine, that meet all of the following:

(1) protect a recipient of a vaccine against the same infection or infections;

(2) require the same number of doses;

(3) have similar safety and efficacy profiles; and

(4) are recommended for comparable populations by the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department shall provide a vaccine selected by a health care provider under Subsection (b) only if the cost to the department of providing the vaccine is not more than 115 percent of the lowest-priced equivalent vaccine.

(e) This section does not apply in the event of a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) The department shall convene the immunization work group established under Section 161.0095 and solicit its recommendations regarding development of a plan for the implementation of the provider choice system under this section. The plan shall include the education of participating health care providers about:

(1) procedures and distribution systems of the Centers for Disease Control and Prevention of the United States Public Health Service; and

(2) vaccine options, the enrollment process, ordering, accountability, and reporting procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 258 (H.B. 448), Sec. 1, eff. September 1, 2009.

Sec. 161.0104. DISASTER PREPARATION. The department shall consult with public health departments and appropriate health care providers to identify adult immunizations that may be necessary to respond to or prepare for a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.07, eff. September 1, 2007.

Renumbered from Health and Safety Code, Section 161.0102 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(52), eff. September 1, 2009.

Sec. 161.0105. LIMITATION ON LIABILITY. (a) A health care provider who acts in compliance with Sections 161.007, 161.00705, 161.00706, and 161.008 and any rules adopted under those sections is not civilly or criminally liable for furnishing the information required under those sections. This subsection does not apply to criminal liability established under Section 161.009.

(b) A person who administers a vaccination under a department program may be held liable only to the extent the person would be liable if the person administered the vaccination outside the program. The person is not liable for damages arising from the acts or omissions of another person acting under the program or the department.

(c) The immunity created by this section is in addition to any immunity created by Sections 161.001 and 161.007(g).

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.08, eff. September 1, 2007.

Sec. 161.0106. RESPIRATORY SYNCYTIAL VIRUS; IMMUNIZATION. As part of the education programs under Sections 161.0095 and 161.010,

the department shall include information about:

- (1) respiratory syncytial virus and the importance of preventative activities for children at risk of contracting the virus;
- (2) respiratory syncytial virus prophylaxis for children who are at high risk of complications from the disease; and
- (3) immunization for respiratory syncytial virus when a vaccine is recommended and available.

Added by Acts 2005, 79th Leg., Ch. 115 (S.B. [1211](#)), Sec. 1, eff. September 1, 2005.

Sec. 161.0107. ELECTRONIC MEDICAL RECORDS SYSTEMS. (a) In this section:

(1) "Electronic medical records software package or system" means an electronic system for maintaining medical records in the clinical setting.

(2) "Medical records" has the meaning assigned by Section 151.002, Occupations Code.

(b) A person who sells, leases, or otherwise provides an electronic medical records software package or system to a person who administers immunizations in this state or to an entity that manages records for the person shall provide, as part of the electronic medical records software package or system, the ability to:

- (1) electronically interface with the immunization registry created under this subchapter; and
- (2) generate electronic reports that contain the fields necessary to populate the immunization registry.

(c) The executive commissioner of the Health and Human Services Commission by rule shall specify:

- (1) the fields necessary to populate the immunization registry, including a field that indicates the patient's consent to be listed in the immunization registry has been obtained; and
- (2) the data standards that must be used for electronic submission of immunization information.

(d) The data standards specified under Subsection (b) must be compatible with the standards for immunization information transmission adopted by the Healthcare Information Technology Standards Panel sponsored by the American National Standards

Institute and included in certification criteria by the Certification Commission for Healthcare Information Technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Sec. 161.0108. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 161.0107.

(b) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Sec. 161.0109. HUMAN PAPILOMAVIRUS; VACCINES EDUCATION MATERIALS. (a) The department, using existing resources, shall produce and distribute informational materials regarding vaccines against human papillomavirus that are approved by the United States Food and Drug Administration for human use. The materials must include information relating to the effectiveness, availability, and contraindications of the vaccines. The materials must be available in English and in Spanish.

(b) The department shall collaborate with the Texas Cancer Council or its successor entity to develop educational programs for parents regarding human papillomavirus and promoting awareness of a minor's need for preventive services for cervical cancer and its precursors.

(c) The department shall develop and maintain an Internet website that targets the public and health care professionals and provides accurate, comprehensive information on all aspects of cervical cancer prevention, including vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 1, eff. September 1, 2007.

Renumbered from Health and Safety Code, Section 161.0107 by Acts

2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(53), eff. September 1, 2009.

#### **SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE**

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission obtained from a lawful adult occupant of the residence; or

(2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.189, eff. Sept. 1, 2003.

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the Texas Department of Criminal Justice for not more than two years, a fine of not more than \$1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than \$500, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.092, eff. September 1, 2009.

#### **SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH CONDITIONS**

Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY. (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing home, rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

- (1) the department;
- (2) a person that makes inquiries under immunization surveys conducted for the department;
- (3) a medical organization;
- (4) a hospital;
- (5) a hospital committee; or
- (6) a cancer registry, including a cancer registry of a cancer treatment center as defined by Section 82.002.

(b) A person is not liable for damages or other relief for:

- (1) providing the information;
- (2) releasing or publishing the findings or conclusions to advance medical research or medical education; or
- (3) releasing or publishing a general summary of those studies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 3, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.03, eff. Sept. 1, 1999.

Sec. 161.0211. EPIDEMIOLOGIC OR TOXICOLOGIC INVESTIGATIONS.

(a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Commission on Environmental Quality, and the two agencies shall coordinate corrective measures as



appropriate. The department shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 65, eff. September 1, 2013.

Sec. 161.0212. RIGHT OF ENTRY. To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Natural Resource Conservation Commission that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) The department, a medical organization, a hospital, a hospital committee, or a cancer registry may use or

publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 4, eff. May 27, 1997.

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE.

(a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION.

This subchapter does not apply to a function of a health maintenance organization other than medical peer review and quality assurance conducted under Chapter 843, Insurance Code, the rules adopted under that chapter, or other applicable state and federal statutes and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.524, eff. Sept. 1, 2003.

**SUBCHAPTER D. MEDICAL COMMITTEES, MEDICAL PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS**

Sec. 161.031. MEDICAL COMMITTEE DEFINED. (a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

- (1) a hospital;
- (2) a medical organization;
- (3) a university medical school or health science center;
- (4) a health maintenance organization licensed under Chapter 843, Insurance Code, including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;
- (5) an extended care facility;
- (6) a hospital district; or
- (7) a hospital authority.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

(c) The term includes a committee, including a joint committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 655, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 908, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.525, eff. Sept. 1, 2003.

Sec. 161.0315. AUTHORITY OF GOVERNING BODY TO FORM COMMITTEE TO EVALUATE MEDICAL AND HEALTH CARE SERVICES. (a) The governing body

of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, hospital district, or hospital authority may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services, except as provided by this section.

(b) Except as provided by Subsection (d), a medical peer review committee or medical committee formed by the governing body of a hospital district may not evaluate medical and health care services provided by a health care facility that:

(1) contracts with the district to provide those services; and

(2) has formed a medical peer review committee or medical committee to evaluate the services provided by the facility.

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.006, Occupations Code, is subject.

(d) If a hospital district and a health care facility described by Subsection (b) do not agree on a contract provision described by Subsection (c), the hospital district has, with respect to a review action for the evaluation of medical and health care services provided by the facility under a contract with the district, a right to:

(1) initiate the review action;

(2) appoint from the medical staff of the facility a number of members to the facility's medical peer review committee or medical committee equal to the number of members appointed to the committee by the facility to conduct the review action, without regard to whether the district initiates the action; and

(3) receive records, information, or reports from the medical peer review committee or medical committee related to the review action.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.006, Occupations Code, is subject.

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or record compiled under this subsection is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

Added by Acts 1999, 76th Leg., ch. 908, Sec. 6, eff. June 18, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.781, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The

records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code, or medical committee; or

(2) a meeting of the governing body of a public hospital, hospital district, hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

(g) Notwithstanding any other provision of this section, the records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 625, Sec. 6, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 908, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1511, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 66, eff. September 1, 2013.

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS AND CONTROLLED SUBSTANCE OVERDOSES**

Sec. 161.041. MANDATORY REPORTING OF GUNSHOT WOUNDS. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES. (a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which an overdose of a

controlled substance listed in Penalty Group 1 under Section 481.102 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

(b) A physician or other person who reports an overdose of a controlled substance under this section shall include in the report information regarding the date of the overdose, the type of controlled substance used, the sex and approximate age of the person attended or treated for the overdose or for whom treatment was sought, the symptoms associated with the overdose, the extent of treatment made necessary by the overdose, and the patient outcome. The physician or other person making the report may provide other demographic information concerning the person attended or treated or for whom treatment was sought but may not disclose the person's name or address or any other information concerning the person's identity.

(c) A hospital, sanitorium, or other institution that makes a report under this section is not subject to civil or criminal liability for damages arising out of the report. An individual who makes a good-faith report under this section is not subject to civil or criminal liability for damages arising out of the report.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.043. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than \$100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health and Safety Code Sec. 161.042 and amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.044. CONTROLLED SUBSTANCE OVERDOSE INFORMATION REPOSITORY. (a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the



physician or other person is precluded from reporting under that section.

(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS**

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.062. GROUNDS FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER G. HUMAN MILK BANKS**

Sec. 161.071. MINIMUM GUIDELINES FOR HUMAN DONOR MILK BANKS. The department shall establish minimum guidelines for the procurement, processing, distribution, or use of human milk by donor milk banks.

Added by Acts 2001, 77th Leg., ch. 379, Sec. 1, eff. Sept. 1, 2001.

**SUBCHAPTER H. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS**

Sec. 161.081. DEFINITIONS. In this subchapter:

- (1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.
- (2) "Permit holder" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.
- (3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes or tobacco products.
- (4) "Retailer" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.
- (5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.
- (6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

- (1) sells, gives, or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or
- (2) sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally

responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.081 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and

relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Added by Acts 2005, 79th Leg., Ch. 391 (S.B. 1465), Sec. 1, eff. September 1, 2005.

Sec. 161.083. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE. (a) Pursuant to federal regulation under 21 C.F.R. Section 897.14(b), a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 154.1142 or 155.0592, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY

LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes or tobacco products or wholesale dealers of cigarettes or tobacco products in this state for distribution to persons who sell cigarettes or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.082 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 62 (S.B. 91), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 2, eff. September 1, 2007.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 18 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.  
Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 2, eff. Sept. 1, 2001.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to the cigarettes or

tobacco products; or

(2) install or maintain a vending machine containing cigarettes or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 18 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.  
Amended by Acts 1999, 76th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS.

(a) A person may not distribute to persons younger than 18 years of age:

(1) a free sample of a cigarette or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product.

(b) Except as provided by Subsection (c), a permit holder may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product may not be redeemable through

mail or courier delivery.

(c) Subsections (a)(2) and (b) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter in a manner that can reasonably be expected to reduce the extent to which cigarettes and tobacco products are sold or distributed to persons who are younger than 18 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes and tobacco products are sold or distributed to ensure compliance with this subchapter. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a



person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter;

(2) at the time of the inspection, the minor decoy is younger than 17 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of cigarettes or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1156, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the

comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.0901. REPORT OF OFFICE OF SMOKING AND HEALTH. (a) Not later than January 5th of each odd-numbered year the Office of Smoking and Health of the department shall report to the governor, lieutenant governor, and the speaker of the house of representatives on the status of smoking and the use of tobacco and tobacco products in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;

(2) a baseline of statistics and analysis regarding illegal tobacco sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) tobacco controls and initiatives by the Office of Smoking and Health of the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the Office of Smoking and Health of the department to decrease the use of tobacco and tobacco products;

(5) the educational programs of the Office of Smoking and Health of the department and the effectiveness of those programs; and

(6) the incidence of use of tobacco and tobacco products by regions in this state, including use of cigarettes and tobacco products by ethnicity.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

**SUBCHAPTER J. EXPOSURE TO LEAD**

Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The board shall adopt rules to implement this section.

Acts 1991, 72nd Leg., ch. 695, Sec. 1, eff. Aug. 26, 1991.

**SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE OR TOBACCO PRODUCT ADVERTISING; FEE**

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "School" means a private or public elementary or secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing

an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.

(d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 1, eff. Oct. 1, 2003.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee and deposit the money as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

- (1) production costs;
- (2) media cost; and
- (3) cost of sales or commissions paid to an agency or broker.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.124. USE OF ADVERTISING FEE. (a) The comptroller shall deposit the fee collected under Section 161.123 to a special account in the state treasury called the tobacco education and enforcement education fund.

(b) Money in the account may be appropriated only for administration and enforcement of this section, enforcement of law relating to cigarettes and tobacco products, and the education advertising campaign and grant program established under Subchapter O, Chapter 161.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

- (1) the amount of fees due and owing;
- (2) attempted concealment of misconduct by the person who committed the violation;
- (3) premeditated misconduct by the person who committed the violation;
- (4) intentional misconduct by the person who committed the violation;
- (5) the motive of the person who committed the violation;
- (6) prior misconduct of a similar or related nature by the person who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(8) violation by the person who committed the violation of an order of the comptroller;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

#### **SUBCHAPTER L. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES**

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication,

interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has

been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, Texas Commission on Alcohol and Drug Abuse, and each state health care regulatory agency by rule shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) Each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.



(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.41, eff. Sept. 1, 1997.

Sec. 161.133. MEMORANDUM OF UNDERSTANDING ON INSERVICE TRAINING. (a) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse by rule shall adopt a joint memorandum of understanding that requires each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The memorandum must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

- (1) reinstatement in the plaintiff's former position;
- (2) compensation for lost wages; and
- (3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff was employed by the defendant; or
- (2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use

of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the Texas Department of Mental Health and Mental Retardation;

(C) commits or threatens to commit, without

justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual

exploitation, including any toll-free telephone number available;  
and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

#### **SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS**

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

- (1) Chapter 31, Human Resources Code;
- (2) the state Medicaid program;
- (3) Title II, the federal Social Security Act, as amended

(42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq., as amended; or

(7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former patient requested under Subsection (a)(6) or (7) without charge. If additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 1999, 76th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 of this code and Section 159.006, Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.783, eff. Sept. 1, 2001.

#### **SUBCHAPTER N. TOBACCO USE BY MINORS**

Sec. 161.251. DEFINITIONS. In this subchapter:

- (1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.
- (2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 18 years of age commits an offense if the individual:

- (1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or
- (2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:

- (1) an adult parent, a guardian, or a spouse of the individual; or
- (2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(d) An offense under this section is punishable by a fine not to exceed \$250.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.253. TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE.

(a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend a tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the defendant.

(b) On request, a tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to a tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of tobacco-related community service instead of attending the tobacco awareness program.

(d) The tobacco awareness program and the tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the tobacco awareness program or the tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently



convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.254. DRIVER'S LICENSE SUSPENSION OR DENIAL. (a) If the defendant does not provide the evidence required under Section 161.253(e) within the period specified by that subsection, the court shall order the Department of Public Safety to suspend or deny issuance of any driver's license or permit to the defendant. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.

(b) The Department of Public Safety shall send to the defendant notice of court action under Subsection (a) by first class mail. The notice must include the date of the order and the reason for the order and must specify the period of the suspension or denial.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 1999.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a fee in the amount of \$30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.  
Amended by:

Acts 2005, 79th Leg., Ch. 886 (S.B. [1426](#)), Sec. 5, eff. September 1, 2005.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

- (1) impose a requirement that a defendant attend a tobacco awareness program or perform tobacco-related community service; or
- (2) order the suspension or denial of a driver's license or permit.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

#### **SUBCHAPTER O. PREVENTION OF TOBACCO USE BY MINORS**

Sec. 161.301. TOBACCO USE PUBLIC AWARENESS CAMPAIGN. (a) The commissioner shall develop and implement a public awareness campaign designed to reduce tobacco use by minors in this state. The campaign may use advertisements or similar media to provide educational information about tobacco use.

(b) The commissioner may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The commissioner may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the

outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(f) A registrant under Chapter 305, Government Code, is not ineligible under Subsections (d) and (e) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products or services by a state agency.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1174 (H.B. 3445), Sec. 6, eff. September 1, 2009.

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of tobacco use by the group's members.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

**SUBCHAPTER O-1. MENTAL HEALTH, SUBSTANCE ABUSE, AND YOUTH SUICIDE**

Sec. 161.325. MENTAL HEALTH PROMOTION AND INTERVENTION, SUBSTANCE ABUSE PREVENTION AND INTERVENTION, AND SUICIDE PREVENTION.

(a) The department, in coordination with the Texas Education Agency and regional education service centers, shall provide and annually update a list of recommended best practice-based programs in the areas specified under Subsection (a-1) for implementation in public elementary, junior high, middle, and high schools within the general education setting. Each school district may select from the list a program or programs appropriate for implementation in the district.

(a-1) The list must include programs in the following areas:

- (1) early mental health intervention;
- (2) mental health promotion and positive youth development;
- (3) substance abuse prevention;
- (4) substance abuse intervention; and
- (5) suicide prevention.

(a-2) The department, the Texas Education Agency, and each regional education service center shall make the list easily accessible on their websites.

(b) The programs on the list must include components that provide for training counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

- (1) recognize students at risk of committing suicide, including students who are or may be the victims of or who engage in bullying;
- (2) recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others; and
- (3) intervene effectively with students described by Subdivision (1) or (2) by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian.

(c) In developing the list of programs, the department and the Texas Education Agency shall consider:

- (1) any existing suicide prevention method developed by a school district; and

(2) any Internet or online course or program developed in this state or another state that is based on best practices recognized by the Substance Abuse and Mental Health Services Administration or the Suicide Prevention Resource Center.

(c-1) Except as otherwise provided by this subsection, each school district shall provide training described in the components set forth under Subsection (b) for teachers, counselors, principals, and all other appropriate personnel. A school district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on the list to satisfy the requirements of this subsection.

(c-2) If a school district provides the training under Subsection (c-1):

(1) a school district employee described under that subsection must participate in the training at least one time; and

(2) the school district shall maintain records that include the name of each district employee who participated in the training.

(d) The board of trustees of each school district may adopt a policy concerning mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention that:

(1) establishes a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(2) establishes a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(3) establishes that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and

(4) sets out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

(e) The policy must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(f) The policy and any necessary procedures adopted under Subsection (d) must be included in:

- (1) the annual student handbook; and
- (2) the district improvement plan under Section 11.252, Education Code.

(g) The department may accept donations for purposes of this section from sources without a conflict of interest. The department may not accept donations for purposes of this section from an anonymous source.

(i) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Policy and procedures adopted in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1134 (H.B. [1386](#)), Sec. 3, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 578 (S.B. [831](#)), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 578 (S.B. [831](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1321 (S.B. [460](#)), Sec. 4, eff. September 1, 2013.

Sec. 161.326. IMMUNITY. This subchapter does not:

- (1) waive any immunity from liability of a school district or of district school officers or employees;
- (2) create any liability for a cause of action against a school district or against district school officers or employees; or

(3) waive any immunity from liability under Section 74.151, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1321 (S.B. 460), Sec. 5, eff. September 1, 2013.

**SUBCHAPTER P. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS**

Sec. 161.351. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.251 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating:

(1) the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(A) tobacco;

(B) water; or

(C) a reconstituted tobacco sheet made wholly from tobacco; and

(2) a nicotine yield rating for the cigarette or tobacco product established under Section 161.353.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.

(c) The department by rule shall establish the time for filing an annual report under this section and shall prescribe the form for

the report.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.252 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(12), eff. Sept. 1, 1999.

Sec. 161.353. NICOTINE YIELD RATES. (a) Each manufacturer shall assign a nicotine yield rating to each cigarette or tobacco product distributed in this state. The rating shall be assigned in accordance with standards adopted by the department.

(b) The department standards must be developed so that the nicotine yield rating reflects, as accurately as possible, nicotine intake for an average consumer of the cigarette or tobacco product.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.253 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.



Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.  
Renumbered from Sec. 161.254 by Acts 1999, 76th Leg., ch. 62, Sec.  
19.01(64), eff. Sept. 1, 1999.

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or  
(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.  
Renumbered from Sec. 161.255 by Acts 1999, 76th Leg., ch. 62, Sec.  
19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch.  
62, Sec. 19.02(13), eff. Sept. 1, 1999.

#### **SUBCHAPTER Q. INSTALLATION OF ASBESTOS**

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

- (C) a private residence;
- (D) an apartment building with not more than four dwelling units; or
- (E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The board shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

- (1) the person does not obtain a required material safety data sheet; or
- (2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed \$10,000 a

day for each violation. Each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) In determining the amount of the civil penalty, the court shall consider:

- (1) the contractor's previous violations;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (3) whether the health and safety of the public was threatened by the violation;
- (4) the demonstrated good faith of the contractor; and
- (5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403; or
- (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section 161.403 or 161.404 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this subchapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) The penalty amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER R. DELIVERY SALES OF CIGARETTES**

Sec. 161.451. DEFINITIONS. In this subchapter:

- (1) "Delivery sale" means a sale of cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes

are delivered by use of the mails or another delivery service. A sale of cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(3) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456;

(5) the tax collection requirements prescribed by Section 161.457; and

(6) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 18 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required by Section 161.453(a)(3) must include a prominent and clearly legible

statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who mails or ships cigarettes in connection with a delivery sale order shall:

(1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

(2) use a method of mailing or shipping that obligates the delivery service to require:

(A) the purchaser placing the delivery sale order, or an adult who is at least 18 years of age and who resides at the purchaser's address, to sign to accept delivery of the shipping container; and

(B) the person signing to accept delivery of the shipping container to provide proof, in the form of a government-issued identification bearing a photograph that the person is:

(i) the addressee or an adult who is at least 18 years of age and who resides at the purchaser's address; and

(ii) at least 18 years of age if the person appears to be younger than 27 years of age; and

(3) provide to the delivery service retained to make the delivery evidence of full compliance with Section 161.457.

(b) A person taking a delivery sale order who delivers the cigarettes without using a third-party delivery service shall comply with the requirements prescribed by this subchapter that apply to a delivery service.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and

(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes that were sold;  
and

(3) the quantity of cigarettes that were sold.

(c) A person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.



Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.461. FORFEITURE. (a) Cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER S. ALLOCATION OF KIDNEYS AVAILABLE FOR TRANSPLANT**

Sec. 161.471. DEFINITION. In this subchapter, "organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.451 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization that has a defined service area that includes all or part of this state is provided to a special pool for redistribution to patients who have been waiting the longest for transplantation in this state.

(b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool. As one of those patients receives a transplant, the patient will be replaced in the pool, in turn, by the next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas'

Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.452 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

#### **SUBCHAPTER T. INFORMATION FOR PARENTS OF NEWBORN CHILDREN**

Sec. 161.501. RESOURCE PAMPHLET AND RESOURCE GUIDE PROVIDED TO PARENTS OF NEWBORN CHILDREN. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to

lower the risk of sudden infant death syndrome; and

(F) educational information in both English and Spanish on pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis;

(2) if the woman is a recipient of medical assistance under Chapter 32, Human Resources Code, provide the woman and the father of the infant, if possible, or another adult caregiver with a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child from birth until age five, including information relating to:

(A) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(B) dental care;

(C) effective parenting;

(D) child safety;

(E) the importance of reading to a child;

(F) expected developmental milestones;

(G) health care resources available in the state;

(H) selecting appropriate child care; and

(I) other resources available in the state;

(3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide described in Subdivision (2), if applicable; and

(4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

(b) A hospital, birthing center, physician, nurse midwife, or midwife:

(1) may use the pamphlet provided on the department's website or an alternative pamphlet that provides the information required by Subsection (a)(1); and

(2) may use the resource guide provided on the department's website or an alternative guide that provides the information required by Subsection (a)(2).

(c) The department may make available online and distribute an existing publication created by another health and human services agency as the resource guide required by Subsection (a)(2).

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 106 (H.B. 1510), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 575 (H.B. 3336), Sec. 1, eff. June 17, 2011.

Sec. 161.502. DUTIES OF DEPARTMENT. (a) The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501;

(2) make available on the department's website:

(A) a printable version of the pamphlet required by Section 161.501(a)(1); and

(B) a printable version of the resource guide required by Section 161.501(a)(2);

(3) update the list of resources and required immunizations in the pamphlet required under Subdivision (2)(A) quarterly;

(4) make the pamphlet and resource guide required by Section 161.501 available for distribution to hospitals, physicians, birthing centers, nurse midwives, and midwives; and

(5) coordinate funding for the development, publication, and distribution of the informational pamphlet and resource guide with other health and human services agencies, and solicit funding for the department's duties under this subchapter through means other than appropriations, such as gifts, grants, and sales of sponsorship or advertising.

(b) The department may include additional information in the pamphlet or resource guide as appropriate for parents of newborns.

(c) The Health and Human Services Commission shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

(1) reducing costs to the state; and

(2) improving outcomes for children.

(d) Not later than December 1 of each even-numbered year, the

Health and Human Services Commission shall submit a report to the legislature on the effectiveness of the resource guide under Section 161.501(a)(2), including legislative recommendations concerning the guide.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Sec. 161.503. LIABILITY NOT CREATED. This subchapter does not create civil or criminal liability.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

**SUBCHAPTER U. INFORMATION REGARDING PROGRAMS FOR MILITARY PERSONNEL  
AND THEIR FAMILIES**

Sec. 161.551. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Servicemember" means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component. In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.11, eff. September 1, 2013.

Sec. 161.552. DIRECTORY OF SERVICES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and through other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and their immediate family.

(b) The directory must include:

(1) information regarding counseling services that:

(A) facilitate the reintegration of the servicemember into civilian and family life;

(B) identify and treat stress disorders, trauma, and traumatic brain injury;

(C) address parenting and family well-being, employment, and substance abuse issues; and

(D) provide crisis intervention services;

(2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that protect and promote the health and well-being of servicemembers and their immediate family and that are accessible in the state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and their families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in the state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and community-based organizations that provide support to servicemembers and their families.

(e) The department shall provide the directory to the Texas Information and Referral Network of the commission in the time periods and in the manner and format specified by the Texas Information and Referral Network.

(f) The department shall provide the directory on the

department's website or through links appearing on the department's website.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.10, eff. September 1, 2013.

**SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS  
MANUFACTURED BY CERTAIN COMPANIES**

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

- (1) recover health care costs to the state imposed by non-settling manufacturers;
- (2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;
- (3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;
- (4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and
- (5) provide funding for any purpose the legislature determines.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.



Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (15).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement described by Subdivision (15).

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B). A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v.

The American Tobacco Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(15)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154

or 155, Tax Code, as appropriate.

(f) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603, during the 2013 calendar year, the fee is imposed at the rate of 2.75 cents for:

- (1) each non-settling manufacturer cigarette; and
- (2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product described by Section 161.602(3).

(b) Beginning in January 2014, and in January of each subsequent year, the comptroller shall compute the rate of the fee applicable during that calendar year by increasing the rate for the preceding calendar year by the greater of:

- (1) three percent; or
- (2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for December a year earlier.

(c) Notwithstanding Subsection (a), the rate of the fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer shall, for calendar months beginning before the effective date of a credit amendment, be calculated by substituting 0.75 cents for 2.75 cents in Subsection (a). For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

## Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE.

(a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is, subject to Section 154.051, Tax Code, entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

- (1) a list of the names and brand families of settling manufacturers;
- (2) a list of each non-settling manufacturer showing whether that manufacturer:
  - (A) is a subsequent participating manufacturer; or
  - (B) is not a subsequent participating manufacturer; and
- (3) the effective date of any credit amendment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

- (1) the non-settling manufacturer's complete name, address, and telephone number;
- (2) the date that the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;
- (3) the names of the brand families of the cigarettes or cigarette tobacco products that the non-settling manufacturer will offer for sale or distribution in this state;
- (4) a statement that the non-settling manufacturer intends to comply with this subchapter; and
- (5) the name, address, telephone number, and signature of

an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161.603 is not made, shall be treated as cigarettes or cigarette tobacco products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.609. AUDIT OR INSPECTION. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.610. COMPROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties thereto, the volume of cigarettes on which the fee required under Section 161.603 is paid, itemized by cigarette manufacturer and brand family.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.614. RULES. The comptroller may issue rules and



regulations as necessary to carry out or enforce this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

#### CHAPTER 162. BLOOD BANKS AND DONATION OF BLOOD

Sec. 162.001. DEFINITIONS. In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the American Association of Blood Banks, and the American Red Cross Blood Services and that is registered or licensed by the Office of Biologics of the United States Food and Drug Administration and accredited by the American Association of Blood Banks or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(3) "HIV" means human immunodeficiency virus.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(a), eff. Sept. 1, 1989.

Sec. 162.002. REQUIRED TESTING OF BLOOD. (a) For each donation of blood, a blood bank shall require the donor to submit to tests for infectious diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS. The medical and donor records of a blood bank are confidential and may not be disclosed except as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

- (1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);
- (2) the Centers for Disease Control of the United States Public Health Service, as required by federal law or regulation; or
- (3) any other local, state, or federal entity, as required by law, rule, or regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED. A blood bank shall disclose blood test results and the name of the person tested to:

- (1) the physician or other person authorized by law who ordered the test;
- (2) the physician attending the person tested; or
- (3) the person tested or a person legally authorized to consent to the test on behalf of the person tested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS. (a) A blood bank may report to other blood banks the name of a donor with a possible infectious disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the infectious disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER. (a) A blood

bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other infectious disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; or

(3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(b), eff. Sept. 1, 1989.

Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING. On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT. (a) After notice and hearing, a court of competent jurisdiction may require a blood bank to provide a recipient of blood from the blood bank with

the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.011. DISCOVERY POWERS OF COURT. (a) A court of

competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the disclosure of the name of a donor or other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under Section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.012. LIMITATION ON LIABILITY. (a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.013. CIVIL PENALTY. (a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

- (1) actual damages;
- (2) a civil penalty of not more than \$1,000; and
- (3) court costs and reasonable attorney's fees incurred by the person bringing the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.014. CRIMINAL PENALTY. (a) A person commits an offense if the person discloses information in violation of Section

162.006, 162.007, 162.010, or 162.011.

(b) An offense under this section is a Class C misdemeanor.

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.015. DONATION OF BLOOD BY PERSONS YOUNGER THAN 18 YEARS OF AGE. A person who is 17 years of age may consent to the donation of the person's blood or blood components. A person younger than 18 years of age may not receive any compensation from a blood bank for a donation of the person's blood or blood components.

Added by Acts 1993, 73rd Leg., ch. 160, Sec. 1, eff. Sept. 1, 1993.

Sec. 162.016. BE A BLOOD DONOR ACCOUNT. (a) The be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account and may spend money credited to the account only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The board:

(1) may accept gifts, grants, and donations from any source for the benefit of the account; and

(2) by rule shall establish guidelines for spending money credited to the account.

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.

Sec. 162.017. BE A BLOOD DONOR ADVISORY COMMITTEE. (a) The commissioner shall appoint a five-member be a blood donor advisory committee composed of:

- (1) one volunteer blood donor who has given at least one gallon of blood in the two years preceding the appointment;
- (2) two representatives from nonprofit blood centers;
- (3) one person who has received a blood transfusion in the five years preceding the appointment; and
- (4) one representative from the department.

(b) The commissioner shall designate one member as presiding officer of the committee.

(c) The committee shall:

- (1) meet at least annually or as called by the commissioner;
- (2) assist the board in establishing guidelines for the expenditure of money credited to the be a blood donor account; and
- (3) review and make recommendations to the department on applications submitted to the department for grants funded with money credited to the be a blood donor account.

(d) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Members of the committee serve staggered four-year terms, with the terms of as near one-half as possible of the members expiring on January 31 of each even-numbered year.

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.

Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS. (a) The executive commissioner of the Health and Human Services Commission shall prepare and update as necessary a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant. The information in the brochure must include:

- (1) the current and potential uses, risks, and benefits of stem cells contained in umbilical cord blood to a potential recipient of donated stem cells, including a biological family member, extended family member, or nonrelated individual;
- (2) the options available for future use or storage of umbilical cord blood after delivery of an infant, including:
  - (A) discarding the stem cells;
  - (B) donating the stem cells to a public umbilical cord blood bank;



(C) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; and

(D) storing the stem cells for immediate and extended family use through a family or sibling donor banking program that provides free collection, processing, and storage when a medical need exists;

(3) the medical process used to collect umbilical cord blood after delivery of an infant;

(4) any risk associated with umbilical cord blood collection to the mother and the infant;

(5) any costs that may be incurred by a pregnant woman who chooses to donate or store umbilical cord blood after delivery of the woman's infant; and

(6) the average cost of public and private umbilical cord blood banking.

(b) The Department of State Health Services shall make the brochure available on the department's website and shall distribute the brochure on request to physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery of an infant.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.

Sec. 162.019. DUTY OF CERTAIN PROFESSIONALS. (a) Except as otherwise provided by this section, a physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall provide the woman with the brochure described in Section 162.018 before the third trimester of the woman's pregnancy or as soon as reasonably feasible.

(b) A person described in Subsection (a) who attends a pregnant woman during delivery of her infant shall permit the mother to arrange for umbilical cord blood storage or donation if the mother requests unless, in the opinion of the person, the donation threatens the health of the mother or her infant.

(c) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) or to permit for the arrangement of umbilical cord blood storage or donation under

Subsection (b) if the action conflicts with the person's religious beliefs and the person makes this fact known to the mother as soon as reasonably feasible.

(d) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) while treating the pregnant woman for an emergency condition or when the mother presents in labor and delivers the infant during that presentation.

(e) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) if the woman provides the person with a written statement that she chooses to view the materials on the website described by Section 162.018(b).

(f) A person described by Subsection (a) who fails to distribute the brochure is not subject to discipline by the appropriate licensing agency and a cause of action is not created by any failure to distribute the brochure as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.

#### **CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND SUBSTANCE ABUSE**

Sec. 163.001. PROGRAM. (a) The department shall develop a model public health education program suitable for school-age children and shall make the program available to any person on request. The program should emphasize:

(1) that abstinence from sexual intercourse is the most effective protection against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction relating to sexual education or sexually transmitted diseases should be age appropriate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.002. INSTRUCTIONAL ELEMENTS. Course materials and instruction relating to sexual education or sexually transmitted diseases should include:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions relating to sexual behavior;

(3) statistics, based on the latest medical information, that indicate the efficacy of the various forms of contraception;

(4) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(5) information concerning the laws prohibiting sexual abuse and the legal and counseling options available to victims of sexual abuse;

(6) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(7) psychologically sound methods of resisting unwanted peer pressure; and

(8) emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.003. ADDITIONAL INSTRUCTIONAL ELEMENTS REGARDING HUMAN PAPILOMAVIRUS. Course materials and instruction relating to sexually transmitted diseases must be available in English and in Spanish and should include:

(1) the following specific information on human papillomavirus:

(A) that sexual intercourse is not required to become infected with human papillomavirus and that the avoidance of skin-to-

skin contact involving the genital areas offers the best protection;

(B) that both males and females may be infected with human papillomavirus and symptoms may not be present;

(C) that younger women are at greater risk of human papillomavirus infection than older women; and

(D) that human papillomavirus may be transmitted to an infant during childbirth;

(2) information regarding the role of human papillomavirus in the development of genital warts, cervical cancer, and other diseases; and

(3) information regarding the continuing need for women to undergo Pap smear testing, even if they have received a vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 2, eff. September 1, 2007.

#### **CHAPTER 164. TREATMENT FACILITIES MARKETING AND ADMISSION PRACTICES**

Sec. 164.001. SHORT TITLE. This chapter may be cited as the Treatment Facilities Marketing Practices Act.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency treatment facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients. Nothing in this chapter should be construed to prohibit a mental health facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to distinguish between the marketing activities of the facility and its clinical functions.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.003. DEFINITIONS. In this chapter:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, or direct mail, to purchase the services provided by a treatment facility.

(2) "Chemical dependency" has the meaning assigned by Section 462.001.

(3) "Chemical dependency facility" means a treatment facility as that term is defined by Section 462.001.

(4) "Intervention and assessment service" means a service that offers assessment, counseling, evaluation, intervention, or referral services or makes treatment recommendations to an individual with respect to mental illness or chemical dependency.

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and

(C) an adult day-care facility or adult day health care facility as defined by Section 103.003, Human Resources Code.

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) "vocational nurse" licensed under Chapter 301, Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

(7) "Mental health services" has the meaning assigned by Section 531.002.

(8) "Mental illness" has the meaning assigned by Section 571.003.

(9) "Referral source" means a person who is in a position to refer or who refers a person to a treatment facility. "Referral source" does not include a physician, an insurer, a health maintenance organization (HMO), a preferred provider arrangement (PPA), or other third party payor or discount provider organization (DPO) where the insurer, HMO, PPA, third party payor, or DPO pays in whole or in part for the treatment of mental illness or chemical dependency.

(10) "Treatment facility" means a chemical dependency facility and a mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.784, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.010, eff. Feb. 1, 2004.

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

(1) a treatment facility:

(A) operated by the Texas Department of Mental Health and Mental Retardation, a federal agency, or a political subdivision; or

(B) funded by the Texas Commission on Alcohol and Drug Abuse;

(2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or

(3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 96, Sec. 1, eff. May 20, 2003.

Sec. 164.005. CONDITIONING EMPLOYEE OR AGENT RELATIONSHIPS ON PATIENT REVENUE. A treatment facility may not permit or provide

compensation or anything of value to its employees or agents, condition employment or continued employment of its employees or agents, set its employee or agent performance standards, or condition its employee or agent evaluations, based on:

(1) the number of patient admissions resulting from an employee's or agent's efforts;

(2) the number or frequency of telephone calls or other contacts with referral sources or patients if the purpose of the telephone calls or contacts is to solicit patients for the treatment facility; or

(3) the existence of or volume of determinations made respecting the length of patient stay.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the

treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and mental retardation center funded by the Texas Department of Mental Health and Mental Retardation;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1,



1993. Amended by Acts 1999, 76th Leg., ch. 1112, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, Sec. 28, eff. June 20, 2003.

Sec. 164.007. QUALIFIED MENTAL HEALTH REFERRAL SERVICE: DEFINITION AND STANDARDS. (a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the Texas Department of Mental Health and Mental Retardation, community mental health and mental retardation centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal

assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1-900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

(b) A qualified mental health referral service may not limit participation by a person for a reason other than:

(1) failure to have a current, valid license without limitation to practice in this state;

(2) failure to maintain professional liability insurance while participating in the service;

(3) a decision by a peer review committee that the person has failed to meet prescribed standards or has not acted in a professional or ethical manner;

(4) termination of the contract between the participant and the qualified mental health referral service by either party under the terms of the contract; or

(5) significant dissatisfaction of consumers that is documented and verifiable.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.008. OPERATING AN INTERVENTION AND ASSESSMENT SERVICE. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service:

(1) is a qualified mental health referral service under Section 164.007;

(2) discloses in all advertising the relationship between the treatment facility and the intervention and assessment service; and

(3) discloses to each person contacting the service, at the time of initial contact, the relationship between the treatment facility and the intervention and assessment service.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.009. DISCLOSURES AND REPRESENTATIONS. (a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible, the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge

for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse, or the Texas Department of Health that sets out restrictions to the patient's freedom that may be imposed on the patient during the patient's stay in a treatment facility.

(b) A treatment facility may not misrepresent to a patient or the parent, guardian, managing conservator, or spouse of a patient, the availability or amount of insurance coverage available to the prospective patient or the amount and percentage of a charge for which the patient will be responsible.

(c) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that:

(1) the patient will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(2) the patient's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(d) A mental health facility may not represent or recommend that a prospective patient should be admitted for inpatient treatment unless the representation is made by a licensed physician or, subsequent to evaluation by a licensed physician, by a mental health professional.

(e) A chemical dependency facility may not represent or recommend that a prospective patient should be admitted to a facility for treatment unless and until:

(1) the prospective patient has been evaluated, in person, by a mental health professional; and

(2) the mental health professional determines that the patient meets the facility's admission standards.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization; or

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.011. INJUNCTION. (a) If it appears that a person is in violation of this chapter, the attorney general, a district attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than \$1,000 and not more than \$25,000 per violation.

(b) A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides.

(c) The attorney general, a district attorney, or a county attorney may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to that local government.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.012. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or treatment facility that is licensed by a state health care regulatory agency is subject to the same consequences as a violation of the licensing law applicable to the individual or treatment facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.013. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business & Commerce Code, for a violation of this chapter, and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.014. RULE-MAKING AUTHORITY. The Texas Commission on Alcohol and Drug Abuse and Texas Board of Mental Health and Mental Retardation may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under its jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

## **CHAPTER 165. BREAST-FEEDING**

### **SUBCHAPTER A. BREAST-FEEDING RIGHTS AND POLICIES**

Sec. 165.001. LEGISLATIVE FINDING. The legislature finds that breast-feeding a baby is an important and basic act of nurture that must be encouraged in the interests of maternal and child health and family values. In compliance with the breast-feeding promotion program established under the federal Child Nutrition Act of 1966 (42 U.S.C. Section 1771 et seq.), the legislature recognizes breast-feeding as the best method of infant nutrition.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.002. RIGHT TO BREAST-FEED. A mother is entitled to breast-feed her baby in any location in which the mother is authorized to be.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.003. BUSINESS DESIGNATION AS "MOTHER-FRIENDLY". (a) A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:

- (1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;
- (2) the provision of accessible locations allowing privacy;
- (3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and
- (4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

(b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.004. SERVICES PROVIDED BY STATE AGENCIES. Any state agency that administers a program providing maternal or child health services shall provide information that encourages breast-feeding to program participants who are pregnant women or mothers with infants.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

#### **SUBCHAPTER B. DEMONSTRATION PROJECT**

Sec. 165.031. LEGISLATIVE RECOGNITION. The legislature recognizes a mother's responsibility to both her job and her child when she returns to work and acknowledges that a woman's choice to breast-feed benefits the family, the employer, and society.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.032. DEMONSTRATION PROJECT. (a) The department shall establish a demonstration project in Travis County to provide access to worksite breast-feeding for department employees who are mothers with infants.

(b) The department shall administer the demonstration project and shall determine the benefits of, potential barriers to, and potential costs of implementing worksite breast-feeding support policies for state employees.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.033. BREAST-FEEDING POLICY. The department shall develop recommendations supporting the practice of worksite breast-feeding that address the following:

- (1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;
- (2) the provision of accessible locations allowing privacy;
- (3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and



(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

**CHAPTER 166. ADVANCE DIRECTIVES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(2) "Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(5-a) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(5-b) "Electronic signature" means a facsimile, scan, uploaded image, computer-generated image, or other electronic

representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual signature.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:

(A) that may be treated but is never cured or eliminated;

(B) that leaves a person unable to care for or make decisions for the person's own self; and

(C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is

serving on active duty in this state.

(13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 1, eff. September 1, 2009.

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

(1) each witness must be a competent adult; and  
 (2) at least one of the witnesses must be a person who is not:

(A) a person designated by the declarant to make a treatment decision;

(B) a person related to the declarant by blood or marriage;

(C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(D) the attending physician;

(E) an employee of the attending physician;

(F) an employee of a health care facility in which the

declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) In this section, "health care provider" means:

- (1) a hospital;
- (2) an institution licensed under Chapter 242, including a skilled nursing facility;
- (3) a home and community support services agency;
- (4) a personal care facility; and
- (5) a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

- (1) the time the individual is admitted to receive services from the health care provider; or
- (2) the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

- (1) the individual's legal guardian;
- (2) a person responsible for the health care decisions of the individual;
- (3) the individual's spouse;
- (4) the individual's adult child;
- (5) the individual's parent; or
- (6) the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.005. ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an advance directive does not:

- (1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person;

or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.

(c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED. A physician, health facility, health care provider, insurer, or health care service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.009. CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 2, eff. June 20, 2003.

Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using:

- (1) a digital signature that:
  - (A) uses an algorithm approved by the department;
  - (B) is unique to the person using it;
  - (C) is capable of verification;
  - (D) is under the sole control of the person using it;
  - (E) is linked to data in a manner that invalidates the digital signature if the data is changed;
  - (F) persists with the document and not by association in separate files; and
  - (G) is bound to a digital certificate; or
- (2) an electronic signature that:
  - (A) is capable of verification;
  - (B) is under the sole control of the person using it;
  - (C) is linked to data in a manner that invalidates the electronic signature if the data is changed; and
  - (D) persists with the document and not by association in separate files.

(b) In approving an algorithm for purposes of Subsection (a)(1)(A), the department may consider an algorithm approved by the National Institute of Standards and Technology.

(c) The executive commissioner of the Health and Human Services Commission by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital

or electronic signature that complies with the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 2, eff. September 1, 2009.

#### **SUBCHAPTER B. DIRECTIVE TO PHYSICIANS**

Sec. 166.031. DEFINITIONS. In this subchapter:

(1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

(2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 208, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.04, eff. Aug. 30, 1993. Renumbered from Sec. 672.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) Except as provided by Subsection (b-1), the declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the directive.

(b-1) The declarant, in lieu of signing in the presence of witnesses, may sign the directive and have the signature acknowledged before a notary public.

(c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

(d) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is incompetent or



otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 1, eff. Jan. 1, 1998. Renumbered from Sec. 672.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 3, eff. September 1, 2009.

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious

illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, \_\_\_\_\_, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____	I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
_____	I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____	I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
-------	---

\_\_\_\_\_

I request that I be kept  
alive in this irreversible  
condition using available  
life-sustaining treatment.  
(THIS SELECTION DOES NOT  
APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you  
may wish to consider listing particular treatments in this space that  
you do or do not want in specific circumstances, such as artificial  
nutrition and fluids, intravenous antibiotics, etc. Be sure to state  
whether you do or do not want the particular treatment.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After signing this directive, if my representative or I elect  
hospice care, I understand and agree that only those treatments  
needed to keep me comfortable would be provided and I would not be  
given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to  
make my wishes known, I designate the following person(s) to make  
treatment decisions with my physician compatible with my personal  
values:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

(If a Medical Power of Attorney has been executed, then an agent  
already has been named and you should not list additional names in  
this document.)

If the above persons are not available, or if I have not  
designated a spokesperson, I understand that a spokesperson will be  
chosen for me following standards specified in the laws of Texas.  
If, in the judgment of my physician, my death is imminent within  
minutes to hours, even with the use of all available medical  
treatment provided within the prevailing standard of care, I  
acknowledge that all treatments may be withheld or removed except  
those needed to maintain my comfort. I understand that under Texas  
law this directive has no effect if I have been diagnosed as  
pregnant. This directive will remain in effect until I revoke it.

No other person may do so.

Signed \_\_\_\_\_ Date \_\_\_\_\_ City, County, State of Residence  
\_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 \_\_\_\_\_ Witness 2 \_\_\_\_\_

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on

reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 2, eff. Jan. 1, 1998. Renumbered from Sec. 672.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.034. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.035. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;
- (2) the patient's parents; or
- (3) the patient's legal guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.006 by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) Except as provided by Section 166.032(b-1), a written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

- (1) a directive be notarized; or
- (2) a person use a form provided by the physician, health care facility, or health care professional.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 4, eff. September 1, 2009.

Sec. 166.037. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of a directive.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.007 and amended by Acts 1999, 76th Leg., ch.

450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.038. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from 672.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

- (1) the patient's spouse;
- (2) the patient's reasonably available adult children;
- (3) the patient's parents; or
- (4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must

be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 291, Sec. 3, eff. Jan. 1, 1998. Renumbered from Sec. 672.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.040. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal or irreversible condition.

(b) Before withholding or withdrawing life-sustaining treatment from a qualified patient under this subchapter, the attending physician must determine that the steps proposed to be taken are in accord with this subchapter and the patient's existing desires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 6.01, eff. Nov. 12, 1991. Renumbered from Sec. 672.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.



Sec. 166.041. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section 166.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.042. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual

knowledge of the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.043. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032, including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.044. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. (a) A physician or health care facility that causes life-sustaining treatment to be withheld or withdrawn from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive.

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the patient's advance directive.

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive.

(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care

facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.015 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.045. LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE.

(a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR TREATMENT DECISION. (a) If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be

reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;

(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;

(3) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Health Care Information Council under Section 166.053; and

(4) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process.

(c) The written explanation required by Subsection (b)(2)(B) must be included in the patient's medical record.

(d) If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. If the patient is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the patient's transfer to:

(1) another physician;

(2) an alternative care setting within that facility; or

(3) another facility.

(e) If the patient or the person responsible for the health

care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate district or county court shall extend the time period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 3, 4, eff. June 20, 2003.

Sec. 166.047. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Sec. 672.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.048. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Sec. 672.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Sec. 672.019 and amended by Acts 1999, 76th Leg., ch.

450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.050. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 672.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician  
Recommends Against Life-Sustaining Treatment That You Wish To  
Continue

You have been given this information because you have requested life-sustaining treatment,\* which the attending physician believes is

not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not appropriate.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.



6. You may ask the appropriate district or county court to extend the 10-day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

\*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment\* and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the

decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

\*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) An attending physician or health care facility may, if it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.

Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas Health Care Information Council shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the council they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to

accept transfer of or provide services to any particular patient.

(c) The Texas Health Care Information Council shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients and shall provide a clearly identifiable link from its home page to the registry page. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

- (1) those patients on whose behalf life-sustaining treatment is being sought;
- (2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and
- (3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Texas Health Care Information Council their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Texas Health Care Information Council nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.

#### **SUBCHAPTER C. OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS**

Sec. 166.081. DEFINITIONS. In this subchapter:

- (1) Repealed by Acts 2003, 78th Leg., ch. 1228, Sec. 8.
- (2) "DNR identification device" means an identification device specified by the board under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.
- (3) "Emergency medical services" has the meaning assigned by Section 773.003.
- (4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.
- (5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and,

unless the context requires otherwise, includes hospital emergency personnel.

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by the board under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by the board under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

(8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

(9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the board under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1228, Sec. 8, eff. June 20, 2003.

Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board.

(b) Except as provided by this subsection, the declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record. The declarant, in lieu of signing in the presence of witnesses, may sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b) and may use a digital or electronic signature authorized under Section 166.011.

(d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) The board, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) An out-of-hospital DNR order is effective on its execution.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 5, eff. September 1, 2009.

Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER. (a) A written out-of-hospital DNR order shall be in the standard form specified by board rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by the board must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the board determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the

document has been properly completed.

(c) The board may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 6, eff. September 1, 2009.

Sec. 166.084. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician shall sign the document in the place required by Section 166.083(b)(13). The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.



Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OR A MINOR. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

- (1) the minor's parents;
- (2) the minor's legal guardian; or
- (3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.005 by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 6, eff. June 20, 2003.

Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's

present desire.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by the board.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to

challenge a decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter.

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995.  
Renumbered from Sec. 674.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 7, eff. September 1, 2009.

Sec. 166.090. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by board rule adopted under Section 166.101.

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995.  
Renumbered from Sec. 674.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.091. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995.  
Renumbered from Sec. 674.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and

removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16 1995.  
Renumbered from Sec. 674.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.093. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A

declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082, including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.095. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.097. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR



order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board to be withheld from the other person with the result that the other person's death is hastened.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.098. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board under this subchapter from a person known by the responding health care professionals to be pregnant.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.099. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.022 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.101. DUTIES OF DEPARTMENT AND BOARD. (a) The board shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted by the board under Subsection (a) are not effective until approved by the Texas State Board of Medical Examiners.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the board.

(d) The board by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the board from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the board for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.023 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

(b) When responding to a call for assistance, emergency medical services personnel:

(1) shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter; and

(2) have no duty to review, examine, interpret, or honor a person's other written directive, including a written directive in the form prescribed by Section 166.033.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 7, eff. June 20, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 1, eff. June 17, 2011.

#### **SUBCHAPTER D. MEDICAL POWER OF ATTORNEY**

Sec. 166.151. DEFINITIONS. In this subchapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.

(3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.

(4) "Principal" means an adult who has executed a medical power of attorney.

(5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.152. SCOPE AND DURATION OF AUTHORITY. (a) Subject to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.

(c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

- (1) a medical power of attorney is in effect; or
- (2) the principal is competent.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

- (1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter, an agent may not consent to:

- (1) voluntary inpatient mental health services;
- (2) convulsive treatment;
- (3) psychosurgery;
- (4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

- (1) the principal's health care provider;
- (2) an employee of the principal's health care provider unless the person is a relative of the principal;
- (3) the principal's residential care provider; or
- (4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.003 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.154. EXECUTION. (a) Except as provided by Subsection (b), the medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.

(b) The principal, in lieu of signing in the presence of the witnesses, may sign the medical power of attorney and have the signature acknowledged before a notary public.

(c) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express direction. The person may use a digital or electronic signature authorized under Section 166.011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 8, eff. September 1, 2009.

Sec. 166.155. REVOCATION. (a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state;

(2) execution by the principal of a subsequent medical power of attorney; or

(3) the divorce of the principal and spouse, if the spouse is the principal's agent, unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers

currently responsible for the principal's care.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.156. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.157. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain

the information; and

- (3) consent to the disclosure of the information.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.159. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

- (1) charge a person a different rate solely because the person has executed a medical power of attorney;



(2) require a person to execute a medical power of attorney before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.160. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's

or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.161. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.011 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.162. DISCLOSURE STATEMENT. A medical power of attorney is not effective unless the principal, before executing the medical power of attorney, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.014 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.163. FORM OF DISCLOSURE STATEMENT. The disclosure statement must be in substantially the following form:

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do

both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

(1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;  
(2) a person related to you by blood or marriage;  
(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;  
(4) your attending physician;

(5) an employee of your attending physician;  
(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your

death.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.015 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 1, eff. January 1, 2014.

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, \_\_\_\_\_ (insert your name) appoint:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS: \_\_\_\_\_

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

B. Second Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

The original of this document is kept at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following individuals or institutions have signed copies:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: \_\_\_\_\_

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on \_\_\_\_\_ day of \_\_\_\_\_ (month, year) at

\_\_\_\_\_  
(City and State)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name of person acknowledging).

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas  
Notary's printed name:

\_\_\_\_\_  
My commission expires:

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on \_\_\_\_\_  
day of \_\_\_\_\_ (month, year) at

\_\_\_\_\_  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

SIGNATURE OF SECOND WITNESS.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 1, eff. January 1, 2014.

Sec. 166.165. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

- (1) was not competent; or
- (2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over an action brought under this section.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the court orders otherwise.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 2, eff. September 1, 2013.

Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED.



This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

#### **CHAPTER 167. FEMALE GENITAL MUTILATION**

Sec. 167.001. FEMALE GENITAL MUTILATION PROHIBITED. (a) A person commits an offense if the person knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age.

(b) An offense under this section is a state jail felony.

(c) It is a defense to prosecution under Subsection (a) that:

(1) the person performing the act is a physician or other licensed health care professional and the act is within the scope of the person's license; and

(2) the act is performed for medical purposes.

Added by Acts 1999, 76th Leg., ch. 642, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 166.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(75), eff. Sept. 1, 2001.

#### **CHAPTER 168. CARE OF STUDENTS WITH DIABETES**

Sec. 168.001. DEFINITIONS. In this chapter:

(1) "Diabetes management and treatment plan" means the document required by Section 168.002.

(2) "Individualized health plan" means the document required by Section 168.003.

(3) "Principal" includes the principal's designee.

(4) "School" means a public elementary or secondary school.

The term does not include an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(5) "School employee" means a person employed by:

(A) a school;

(B) a local health department that assists a school under this chapter; or

(C) another entity with which a school has contracted to perform its duties under this chapter.

(6) "Unlicensed diabetes care assistant" means a school employee who has successfully completed the training required by Section 168.005.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.002. DIABETES MANAGEMENT AND TREATMENT PLAN. (a) A diabetes management and treatment plan must be developed and implemented for each student with diabetes who will seek care for the student's diabetes while at school or while participating in a school activity. The plan shall be developed by:

(1) the student's parent or guardian; and

(2) the physician responsible for the student's diabetes treatment.

(b) A diabetes management and treatment plan must:

(1) identify the health care services the student may receive at school;

(2) evaluate the student's ability to manage and level of understanding of the student's diabetes; and

(3) be signed by the student's parent or guardian and the physician responsible for the student's diabetes treatment.

(c) The parent or guardian of a student with diabetes who seeks care for the student's diabetes while the student is at school shall submit to the school a copy of the student's diabetes management and treatment plan. The plan must be submitted to and reviewed by the school:

(1) before or at the beginning of the school year;

(2) on enrollment of the student, if the student enrolls in

the school after the beginning of the school year; or

(3) as soon as practicable following a diagnosis of diabetes for the student.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.003. INDIVIDUALIZED HEALTH PLAN. (a) An individualized health plan is a coordinated plan of care designed to meet the unique health care needs of a student with diabetes in the school setting.

(b) An individualized health plan must be developed for each student with diabetes who will seek care for diabetes while at school or while participating in a school activity. The school principal and the school nurse, if a school nurse is assigned to the school, shall develop a student's individualized health plan in collaboration with the student's parent or guardian and, to the extent practicable, the physician responsible for the student's diabetes treatment and one or more of the student's teachers.

(c) A student's individualized health plan must incorporate components of the student's diabetes management and treatment plan, including the information required under Section 168.002(b). A school shall develop a student's individualized health plan on receiving the student's diabetes management and treatment plan.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.004. UNLICENSED DIABETES CARE ASSISTANT. (a) At each school in which a student with diabetes is enrolled, the school principal shall:

(1) seek school employees who are not health care professionals to serve as unlicensed diabetes care assistants and care for students with diabetes; and

(2) make efforts to ensure that the school has:

(A) at least one unlicensed diabetes care assistant if a full-time nurse is assigned to the school; and

(B) at least three unlicensed diabetes care assistants if a full-time nurse is not assigned to the school.

(b) An unlicensed diabetes care assistant shall serve under the supervision of the principal.

(c) A school employee may not be subject to any penalty or disciplinary action for refusing to serve as an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.005. TRAINING FOR UNLICENSED DIABETES CARE ASSISTANT.

(a) The Texas Diabetes Council shall develop guidelines, with the assistance of the following entities, for the training of unlicensed diabetes care assistants:

- (1) the department's School Health Program;
- (2) the American Diabetes Association;
- (3) the Juvenile Diabetes Research Foundation

International;

- (4) the American Association of Diabetes Educators;
- (5) the Texas Nurses Association;
- (6) the Texas School Nurse Organization; and
- (7) the Texas Education Agency.

(b) If a school nurse is assigned to a campus, the school nurse shall coordinate the training of school employees acting as unlicensed diabetes care assistants.

(c) Training under this section must be provided by a health care professional with expertise in the care of persons with diabetes or by the school nurse. The training must be provided before the beginning of the school year or as soon as practicable following:

- (1) the enrollment of a student with diabetes at a campus that previously had no students with diabetes; or
- (2) a diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

(d) The training must include instruction in:

- (1) recognizing the symptoms of hypoglycemia and hyperglycemia;
- (2) understanding the proper action to take if the blood glucose levels of a student with diabetes are outside the target ranges indicated by the student's diabetes management and treatment plan;

(3) understanding the details of a student's individualized health plan;

(4) performing finger-sticks to check blood glucose levels, checking urine ketone levels, and recording the results of those checks;

(5) properly administering glucagon and insulin and recording the results of the administration;

(6) recognizing complications that require seeking emergency assistance; and

(7) understanding the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the proper actions to be taken if a student's schedule is disrupted.

(e) The school nurse or principal shall maintain a copy of the training guidelines and any records associated with the training.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.006. REQUIRED INFORMATION FOR CERTAIN EMPLOYEES. A school district shall provide to each district employee who is responsible for providing transportation for a student with diabetes or supervising a student with diabetes during an off-campus activity a one-page information sheet that:

(1) identifies the student who has diabetes;

(2) identifies potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and

(3) provides the telephone number of a contact person in case of an emergency involving the student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.007. REQUIRED CARE OF STUDENTS WITH DIABETES. (a) If a school nurse is assigned to a campus and the nurse is available, the nurse shall perform the tasks necessary to assist a student with diabetes in accordance with the student's individualized health plan. If a school nurse is not assigned to the campus or a school nurse is

not available, an unlicensed diabetes care assistant shall perform the tasks necessary to assist the student with diabetes in accordance with the student's individualized health plan and in compliance with any guidelines provided during training under Section 168.005. An unlicensed diabetes care assistant may perform the tasks provided by this subsection only if the parent or guardian of the student signs an agreement that:

(1) authorizes an unlicensed diabetes care assistant to assist the student; and

(2) states that the parent or guardian understands that an unlicensed diabetes care assistant is not liable for civil damages as provided by Section 168.009.

(b) If a school nurse is not assigned to a campus:

(1) an unlicensed diabetes care assistant must have access to an individual with expertise in the care of persons with diabetes, such as a physician, a registered nurse, a certified diabetes educator, or a licensed dietitian; or

(2) the principal must have access to the physician responsible for the student's diabetes treatment.

(c) Each school shall adopt a procedure to ensure that a school nurse or at least one unlicensed diabetes care assistant is present and available to provide the required care to a student with diabetes during the regular school day.

(d) A school district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required unlicensed diabetes care assistants.

(e) An unlicensed diabetes care assistant who assists a student as provided by Subsection (a) in compliance with a student's individualized health plan:

(1) is not considered to be engaging in the practice of professional or vocational nursing under Chapter 301, Occupations Code, or other state law; and

(2) is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health care professional.

(f) An unlicensed diabetes care assistant may exercise reasonable judgment in deciding whether to contact a health care provider in the event of a medical emergency involving a student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.008. INDEPENDENT MONITORING AND TREATMENT. In accordance with the student's individualized health plan, a school shall permit the student to attend to the management and care of the student's diabetes, which may include:

- (1) performing blood glucose level checks;
- (2) administering insulin through the insulin delivery system the student uses;
- (3) treating hypoglycemia and hyperglycemia;
- (4) possessing on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and
- (5) otherwise attending to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.009. IMMUNITY FROM DISCIPLINARY ACTION OR LIABILITY.

(a) A school employee may not be subject to any disciplinary proceeding, as defined by Section 22.0512(b), Education Code, resulting from an action taken in compliance with this subchapter. The requirements of this subchapter are considered to involve the employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Section 22.0511, Education Code. Nothing in the subchapter shall be considered to limit the immunity from liability afforded under Section 22.0511, Education Code.

(b) A school nurse is not responsible for and may not be subject to disciplinary action under Chapter 301, Occupations Code, for actions performed by an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.010. DIABETES INTERVENTION PILOT PROGRAM FOR SCHOOL DISTRICTS LOCATED ON THE TEXAS-MEXICO BORDER. (a) This section applies only to a school district located in a county that:

- (1) has a population of less than 800,000; and
- (2) is located on the international border.

(b) The department, in consultation with the Texas Education Agency, shall adopt criteria for the development of a pilot program that is designed to prevent and detect Type 2 diabetes for a school district described by Subsection (a) that has a student population identified by the commissioner as at risk for Type 2 diabetes and that takes into account the needs of the school district. A pilot program developed under this subsection must provide that:

(1) for each student in kindergarten through grade eight, each school in the school district must:

(A) measure the height, weight, and blood glucose levels of the student at the beginning of the school year and at another appropriate time during the implementation of the program; and

(B) track the measurements of the student and the progress of the student under the program through a data entry system provided over the Internet; and

(2) the pilot program components consist of bilingual materials.

(c) A school district to which Subsection (a) applies may choose to participate in a pilot program under this section. In the first year a school district implements a program under this section, the district shall report the measurements of student height, weight, and blood glucose levels and the progress of a student under the program to the entity that administers the program. The administering entity, in cooperation with the department, shall evaluate and analyze the measurements to determine the effectiveness of the program in the first year.

(d) The department shall, from money appropriated for that purpose, distribute money to each school district that chooses to implement a pilot program under this section to cover the costs associated with the program.

Added by Acts 2007, 80th Leg., R.S., Ch. 1111 (H.B. [3618](#)), Sec. 1, eff. June 15, 2007.

Amended by:



Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 34, eff. September 1, 2011.

Sec. 168.011. GRANT-WRITING COORDINATION PROGRAM. (a) The department shall employ one person as a grant writer to assist and coordinate with school districts located in the Texas-Mexico border region in obtaining grants and other funds for school-based health centers.

(b) A grant writer employed under this section may secure a grant or other funds on behalf of the state for a school-based health center.

(c) Funds obtained by the use of a grant writer employed under this section may be used only to:

(1) acquire, construct, or improve facilities for a school-based health center;

(2) purchase or lease equipment or materials for a school-based health center; or

(3) pay the salary or employment benefits of a person who is employed to work exclusively in a school-based health center.

Added by Acts 2007, 80th Leg., R.S., Ch. 1111 (H.B. 3618), Sec. 1, eff. June 15, 2007.

#### **CHAPTER 169. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM**

Sec. 169.001. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "first offender prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services

relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a first offender prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant:

(1) has not been previously convicted of a felony offense; and

(2) is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(a)(2), Penal Code, in which the defendant offered or agreed to hire a person to engage in sexual conduct.

(b) A defendant is eligible to participate in a first offender prostitution prevention program established under this chapter only if:

(1) the attorney representing the state consents to the defendant's participation in the program; and

(2) the court in which the criminal case is pending finds that the defendant has not been previously convicted of:

(A) an offense under Section 20A.02, 43.02, 43.03, 43.04, or 43.05, Penal Code;

(B) an offense listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(C) an offense punishable as a felony under Chapter 481.

(c) For purposes of Subsection (b), a defendant has been previously convicted of an offense listed in that subsection if:

(1) the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; or

(2) the defendant was convicted under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b).

(d) A defendant is not eligible to participate in the first offender prostitution prevention program if the defendant offered or agreed to hire a person to engage in sexual conduct and the person was younger than 18 years of age at the time of the offense.

(e) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the first offender prostitution prevention program or otherwise proceed through the criminal justice system.

(f) If a defendant who chooses to participate in the first offender prostitution prevention program fails to attend any portion of the program, the court in which the defendant's criminal case is pending shall issue a warrant for the defendant's arrest and proceed on the criminal case as if the defendant had chosen not to participate in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) A first offender prostitution prevention program established under this chapter must:

- (1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;
- (2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;
- (3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and
- (4) provide each participant with classroom instruction related to the prevention of prostitution.

(b) To provide each program participant with information, counseling, and services described by Subsection (a)(3), a program established under this chapter may employ a person or solicit a volunteer who is:

- (1) a health care professional;
- (2) a psychologist;
- (3) a licensed social worker or counselor;
- (4) a former prostitute;
- (5) a family member of a person arrested for soliciting prostitution;
- (6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or
- (7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) A program established under this chapter shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and the

speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of first offender prostitution prevention programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a first offender prostitution prevention program established under this chapter.

(c) A first offender prostitution prevention program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to the division on request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Sec. 169.005. FEES. (a) A first offender prostitution prevention program established under this chapter may collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed \$1,000, from which the following must be paid:

(1) a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the amount paid under Subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Section 531.383, Government Code; and

(3) a law enforcement training fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the

judge, magistrate, or program director administering the first offender prostitution prevention program. The fees must be based on the participant's ability to pay.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) To encourage participation in a first offender prostitution prevention program established under this chapter, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) On a participant's successful completion of a first offender prostitution prevention program, a judge or magistrate may excuse the participant from any condition of community supervision previously suspended under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

#### **CHAPTER 169A. PROSTITUTION PREVENTION PROGRAM**

Sec. 169A.001. PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

(a) The commissioners court of a county or governing body of a municipality may establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a)(1), Penal Code, in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee.

(b) A defendant is eligible to participate in a prostitution prevention program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program.

(c) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the prostitution prevention program or otherwise proceed through the criminal justice system.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.0025. ESTABLISHMENT OF REGIONAL PROGRAM. The commissioners courts of two or more counties, or the governing bodies of two or more municipalities, may elect to establish a regional prostitution prevention program under this chapter for the participating counties or municipalities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.003. PROGRAM POWERS AND DUTIES. (a) A prostitution prevention program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with instruction related to the prevention of prostitution.

(b) To provide each program participant with information, counseling, and services described by Subsection (a)(3), a program established under this chapter may employ a person or solicit a volunteer who is:

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or counselor;

(4) a former prostitute;

(5) a family member of a person arrested for soliciting prostitution;

(6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or

(7) an employee of a nongovernmental organization



specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) A program established under this chapter shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.004. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of prostitution prevention programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a prostitution prevention program established under this chapter.

(c) A legislative committee may require a county that does not establish a prostitution prevention program under this chapter due to a lack of sufficient funding, as provided by Section 169A.0055(c), to provide the committee with any documentation in the county's possession that concerns federal or state funding received by the county.

(d) A prostitution prevention program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to the division on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.005. FEES. (a) A prostitution prevention program established under this chapter may collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed \$1,000, from which the following must be paid:

(1) a counseling and services fee in an amount necessary to

cover the costs of the counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the amount paid under Subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Section 531.383, Government Code; and

(3) a law enforcement training fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the prostitution prevention program. The fees must be based on the participant's ability to pay.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.0055. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) The commissioners court of a county shall establish a prostitution prevention program if:

(1) the county has a population of more than 200,000; and

(2) a municipality in the county has not established a prostitution prevention program.

(b) A county required under this section to establish a prostitution prevention program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a prostitution prevention program under this section only if the county receives sufficient federal or state funding specifically for that purpose.

(d) A county that does not establish a prostitution prevention program as required by this section and maintain the program is

ineligible to receive from the state funds for a community supervision and corrections department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

Sec. 169A.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) To encourage participation in a prostitution prevention program established under this chapter, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) On a participant's successful completion of a prostitution prevention program, a judge or magistrate may excuse the participant from any condition of community supervision previously suspended under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1167 (S.B. 484), Sec. 1, eff. September 1, 2013.

#### **CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION**

Sec. 170.001. DEFINITIONS. In this chapter:

(1) "Abortion" means an act involving the use of an instrument, medicine, drug, or other substance or device developed to terminate the pregnancy of a woman if the act is done with an intention other than to:

(A) increase the probability of a live birth of the unborn child of the woman;

(B) preserve the life or health of the child; or

(C) remove a dead fetus.

(2) "Physician" means an individual licensed to practice medicine in this state.

(3) "Viable" means the stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case, an unborn child possesses the capacity to live outside its mother's womb after its premature birth from any cause. The term does not include a fetus whose biparietal diameter is less than 60 millimeters.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.001, eff. Sept. 1, 2001.

Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as provided by Subsection (b), a person may not intentionally or knowingly perform an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy.

(b) Subsection (a) does not prohibit a person from performing an abortion if at the time of the abortion the person is a physician and concludes in good faith according to the physician's best medical judgment that:

(1) the fetus is not a viable fetus and the pregnancy is not in the third trimester;

(2) the abortion is necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman; or

(3) the fetus has a severe and irreversible abnormality, identified by reliable diagnostic procedures.

(c) A physician who performs an abortion that, according to the physician's best medical judgment at the time of the abortion, is to abort a viable unborn child during the third trimester of the pregnancy shall certify in writing to the department, on a form prescribed by the department, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b)(2) or (3). The certification must be made not later than the 30th day after the date the abortion was performed.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999.

## CHAPTER 171. ABORTION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. SHORT TITLE. This chapter may be called the Woman's Right to Know Act.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.002. DEFINITIONS. In this chapter:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

(2) "Abortion provider" means a facility where an abortion is performed, including the office of a physician and a facility licensed under Chapter 245.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(4) "Sonogram" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 1, eff. September 1, 2011.

Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be performed only by a physician licensed to practice medicine in this state.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) A physician performing or inducing an abortion:

(1) must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(A) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B) provides obstetrical or gynecological health care services; and

(2) shall provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or

induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b) A physician who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 2, eff. October 29, 2013.

Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.005. DEPARTMENT TO ENFORCE. The department shall enforce this chapter.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. INFORMED CONSENT**

Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform the abortion informs the pregnant woman on whom the abortion is to be performed of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the Department of State Health Services;

(ii) are accessible on an Internet website sponsored by the department;

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at

least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed;

(B) the physician who is to perform the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR



THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

\_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_ MY FETUS HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:\_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE";

(6) before the abortion is performed, the physician who is to perform the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

(a-1) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or

make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may not exceed the reimbursement rate established for the service by the Health and Human Services Commission for statewide medical reimbursement programs.

(b) The information required to be provided under Subsections (a)(1) and (2) may not be provided by audio or video recording and must be provided at least 24 hours before the abortion is to be performed:

(1) orally and in person in a private and confidential setting if the pregnant woman currently lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period; or

(2) orally by telephone or in person in a private and confidential setting if the pregnant woman certifies that the woman currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period.

(c) When providing the information under Subsection (a)(3), the physician or the physician's agent must provide the pregnant woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

(d) The information provided to the woman under Subsection (a)(2)(B) must include, based on information available from the Office of the Attorney General and the United States Department of Health and Human Services Office of Child Support Enforcement for the three-year period preceding the publication of the information, information regarding the statistical likelihood of collecting child support.

(e) The department is not required to republish informational materials described by Subsection (a)(2)(B) because of a change in information described by Subsection (d) unless the statistical information in the materials changes by five percent or more.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 2, eff.

September 1, 2011.

Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion begins, a copy of the signed, written certification received by the physician under Section 171.012(a)(6) must be placed in the pregnant woman's medical records.

(b) A copy of the signed, written certification required under Sections 171.012(a)(5) and (6) shall be retained by the facility where the abortion is performed until:

(1) the seventh anniversary of the date it is signed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date it is signed;

or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0122. VIEWING PRINTED MATERIALS AND SONOGRAM IMAGE; HEARING HEART AUSCULTATION OR VERBAL EXPLANATION. (a) A pregnant woman may choose not to view the printed materials provided under Section 171.012(a)(3) after she has been provided the materials.

(b) A pregnant woman may choose not to view the sonogram images required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(c) A pregnant woman may choose not to hear the heart auscultation required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(d) A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1) the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;

(2) the woman is a minor and obtaining an abortion in

accordance with judicial bypass procedures under Chapter 33, Family Code; or

(3) the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

(e) The physician and the pregnant woman are not subject to a penalty under this chapter solely because the pregnant woman chooses not to view the printed materials or the sonogram images, hear the heart auscultation, or receive the verbal explanation, if waived as provided by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0123. PATERNITY AND CHILD SUPPORT INFORMATION. If, after being provided with a sonogram and the information required under this subchapter, the pregnant woman chooses not to have an abortion, the physician or an agent of the physician shall provide the pregnant woman with a publication developed by the Title IV-D agency that provides information about paternity establishment and child support, including:

- (1) the steps necessary for unmarried parents to establish legal paternity;
  - (2) the benefits of paternity establishment for children;
  - (3) the steps necessary to obtain a child support order;
  - (4) the benefits of establishing a legal parenting order;
- and
- (5) financial and legal responsibilities of parenting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A physician may perform an abortion without obtaining informed consent under this subchapter in a medical emergency. A physician who performs an abortion in a medical emergency shall:

- (1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) The physician or the physician's agent shall furnish copies of the materials described by Section 171.014 to the pregnant woman at least 24 hours before the abortion is to be performed and shall direct the pregnant woman to the Internet website required to be published under Section 171.014(e). The physician or the physician's agent may furnish the materials to the pregnant woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) A physician or the physician's agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by the department.

(c) The physician and the physician's agent may disassociate themselves from the materials and may choose to comment on the materials or to refrain from commenting.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 4, eff. September 1, 2011.

Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department shall publish informational materials that include:

- (1) the information required to be provided under Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and
- (2) the materials required by Sections 171.015 and 171.016.

(b) The materials shall be published in:

- (1) English and Spanish;
- (2) an easily comprehensible form; and
- (3) a typeface large enough to be clearly legible.

(c) The materials shall be available at no cost from the

department on request. The department shall provide appropriate quantities of the materials to any person.

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The department shall adopt rules necessary for considering and making changes to the materials.

(e) The department shall develop and maintain an Internet website to display the information required to be published under this section. In developing and maintaining the website the department shall, to the extent reasonably practicable, safeguard the website against alterations by anyone other than the department and shall monitor the website each day to prevent and correct tampering. The department shall ensure that the website does not collect or maintain information regarding access to the website.

(f) In addition to any other organization or entity, the department shall use the American College of Obstetricians and Gynecologists as the resource in developing information required to be provided under Sections 171.012(a)(1)(B) and (D), Sections 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in maintaining the department's Internet website.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. The informational materials must include:

(1) geographically indexed materials designed to inform the pregnant woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer;

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted; and

(iv) a comprehensive list of agencies and organizations that offer sonogram services at no cost to the pregnant woman;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; and

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 5, eff. September 1, 2011.

Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF UNBORN CHILD. (a) The informational materials must include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) The materials must include color pictures representing the development of the child at two-week gestational increments. The pictures must contain the dimensions of the unborn child and must be realistic.

(c) The materials provided under this section must be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an unemancipated minor subject to Chapter 33, Family Code, the 24-hour periods established under Sections 171.012(b) and 171.013(a) may run concurrently with the period during which actual or constructive notice is provided under Section 33.002, Family Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.018. OFFENSE. A physician who intentionally performs an abortion on a woman in violation of this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$10,000. In this section, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION**

Sec. 171.041. SHORT TITLE. This subchapter may be cited as the Preborn Pain Act.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.042. DEFINITIONS. In this subchapter:

(1) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(2) "Severe fetal abnormality" has the meaning assigned by Section 285.202.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:

(1) making a determination of the probable post-fertilization age of the unborn child; or

(2) possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.



Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.045. METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

(1) the probable post-fertilization age of the unborn child is 20 or more weeks; or

(2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.

(b) Except as otherwise provided by Section 171.046(a)(3), a physician performing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

(1) the immediate abortion of her pregnancy without the

delay necessary to determine the probable post-fertilization age of the unborn child;

(2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or

(3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) A physician may not take an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(b) Unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(c) A court may order the disclosure of information that is confidential under this section if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on each interested party; and

(3) the court determines after the hearing and an in camera

review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October

29, 2013.

**SUBCHAPTER D. ABORTION-INDUCING DRUGS**

Sec. 171.061. DEFINITIONS. In this subchapter:

(1) "Abortion" means the act of using, administering, prescribing, or otherwise providing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to terminate a clinically diagnosable pregnancy of a woman and with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the woman's unborn child. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion;

(C) remove an ectopic pregnancy; or

(D) treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(3) "Final printed label" or "FPL" means the informational document approved by the United States Food and Drug Administration for an abortion-inducing drug that:

(A) outlines the protocol authorized by that agency and agreed to by the drug company applying for authorization of the drug by that agency; and

(B) delineates how a drug is to be used according to approval by that agency.

(4) "Gestational age" means the amount of time that has

elapsed since the first day of a woman's last menstrual period.

(5) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion.

(6) "Mifeprex regimen," "RU-486 regimen," or "RU-486" means the abortion-inducing drug regimen approved by the United States Food and Drug Administration that consists of administering mifepristone and misoprostol.

(7) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(8) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus.

(9) "Unborn child" means an offspring of human beings from conception until birth.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD.

Notwithstanding Section 171.005, the Texas Medical Board shall enforce this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.063. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly give, sell, dispense, administer, provide, or prescribe an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

(1) the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician; and

(2) except as otherwise provided by Subsection (b), the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug.

(b) A person may provide, prescribe, or administer the

abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(c) Before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, the physician must examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(e) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug. At the follow-up visit, the physician must:

(1) confirm that the pregnancy is completely terminated; and

(2) assess the degree of bleeding.

(f) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (e). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(g) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section

and the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.064. ADMINISTRATIVE PENALTY. (a) The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code, against a person who violates Section 171.063.

(b) A penalty may not be assessed under this section against a pregnant woman who receives a medical abortion.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

**SUBTITLE I. MEDICAL RECORDS**  
**CHAPTER 181. MEDICAL RECORDS PRIVACY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 181.001. DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care

provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(4) "Marketing" means:

(A) making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service, unless the communication is made:

(i) to describe a health-related product or service or the payment for a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about:

(a) the entities participating in a health care provider network or health plan network;

(b) replacement of, or enhancement to, a health plan; or

(c) health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;

(ii) for treatment of the individual;

(iii) for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or



(iv) by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list;

(B) an arrangement between a covered entity and any other entity under which the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service; and

(C) notwithstanding Paragraphs (A)(ii) and (iii), a product-specific written communication to a consumer that encourages a change in products.

(5) "Product" means a prescription drug or prescription medical device.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 2.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 1, eff. September 1, 2012.

Sec. 181.002. APPLICABILITY. (a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 653 (S.B. 1106), Sec. 5, eff. June 17, 2011.

Sec. 181.003. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 2, eff. September 1, 2012.

Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011, and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 4, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 3, eff. September 1, 2012.

Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC. Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 4, eff. September 1, 2012.

#### **SUBCHAPTER B. EXEMPTIONS**

Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapter D, this chapter does not apply to:

- (1) a covered entity as defined by Section 602.001, Insurance Code;
- (2) an entity established under Article 5.76-3, Insurance Code; or
- (3) an employer.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 20, eff. April 1, 2005.

Sec. 181.052. PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS. (a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

- (b) To the extent that a covered entity engages in activities

of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.053. NONPROFIT AGENCIES. The department shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.054. WORKERS' COMPENSATION. This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under

a self-insured program for workers' compensation.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.055. EMPLOYEE BENEFIT PLAN. This chapter does not apply to:

- (1) an employee benefit plan; or
- (2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.056. AMERICAN RED CROSS. This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 5, eff. Sept. 1, 2003.

Sec. 181.057. INFORMATION RELATING TO OFFENDERS WITH MENTAL IMPAIRMENTS. This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.058. EDUCATIONAL RECORDS. In this chapter, protected health information does not include:

- (1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or
- (2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.059. CRIME VICTIM COMPENSATION. This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Subchapter B, Chapter 56, Code of Criminal Procedure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 5, eff. September 1, 2012.

**SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION**

Sec. 181.101. TRAINING REQUIRED. (a) Each covered entity shall provide training to employees of the covered entity regarding the state and federal law concerning protected health information as necessary and appropriate for the employees to carry out the employees' duties for the covered entity.

(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 90th day after the date the employee is hired by the covered entity.

(c) If the duties of an employee of a covered entity are affected by a material change in state or federal law concerning protected health information, the employee shall receive training described by Subsection (a) within a reasonable period, but not later than the first anniversary of the date the material change in law takes effect.

(d) A covered entity shall require an employee of the entity who receives training described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's completion of training. The covered entity shall maintain the signed statement until the sixth anniversary of the date the statement is signed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1367 (S.B. 1609), Sec. 1, eff. June 14, 2013.

## Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS.

(a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney general shall maintain an Internet website that provides:

(1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;

(2) a list of the state agencies, including the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY GENERAL.

(a) The attorney general annually shall submit to the legislature a report describing:

(1) the number and types of complaints received by the attorney general and by the state agencies receiving consumer complaints under Section 181.103; and

(2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

**SUBCHAPTER D. PROHIBITED ACTS**

Sec. 181.151. REIDENTIFIED INFORMATION. A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.152. MARKETING USES OF INFORMATION. (a) A covered entity must obtain clear and unambiguous permission in written or electronic form to use or disclose protected health information for any marketing communication, except if the communication is:

(1) in the form of a face-to-face communication made by a covered entity to an individual;

(2) in the form of a promotional gift of nominal value provided by the covered entity;

(3) necessary for administration of a patient assistance program or other prescription drug savings or discount program; or



(4) made at the oral request of the individual.

(b) If a covered entity uses or discloses protected health information to send a written marketing communication through the mail, the communication must be sent in an envelope showing only the names and addresses of sender and recipient and must:

(1) state the name and toll-free number of the entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the 45th day after the date the person receives the request.

(d) A marketing communication made at the oral request of the individual under Subsection (a)(4) may be made only if clear and unambiguous oral permission for the use or disclosure of the protected health information is obtained. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 6, eff. Jan. 1, 2004.

Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code;  
or

(2) as otherwise authorized or required by state or federal

law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS. (a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

- (1) posting a written notice in the covered entity's place of business;
- (2) posting a notice on the covered entity's Internet website; or
- (3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

- (1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

- (A) treatment;
- (B) payment;

(C) health care operations; or  
(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a covered entity as defined by 45 C.F.R. Section 160.103.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

#### **SUBCHAPTER E. ENFORCEMENT**

Sec. 181.201. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) \$5,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) \$25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) \$250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed \$250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court

finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$1.5 million annually.

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 8, eff.

September 1, 2012.

Sec. 181.202. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by a covered entity that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

- (1) revoke the covered entity's license; or
- (2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 9, eff. September 1, 2012.

Sec. 181.203. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.205. MITIGATION. (a) In an action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of individually identifiable health information, a covered entity may introduce, as mitigating evidence, evidence of the entity's good faith efforts to comply with:

- (1) state law related to the privacy of individually identifiable health information; or
- (2) the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall

consider the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;
- (2) the covered entity's compliance history;
- (3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;
- (4) whether the covered entity was certified at the time of the violation as described by Section 182.108;
- (5) the amount necessary to deter a future violation; and
- (6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 7, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 10, eff. September 1, 2012.

Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The commission, in coordination with the attorney general, the Texas Health Services Authority, and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency

of this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.

Sec. 181.207. FUNDING. The commission and the Texas Department of Insurance, in consultation with the Texas Health Services Authority, shall apply for and actively pursue available federal funding for enforcement of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.

## **CHAPTER 182. TEXAS HEALTH SERVICES AUTHORITY**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 182.001. PURPOSE. This chapter establishes the Texas Health Services Authority as a public-private collaborative to implement the state-level health information technology functions identified by the Texas Health Information Technology Advisory Committee by serving as a catalyst for the development of a seamless electronic health information infrastructure to support the health care system in the state and to improve patient safety and quality of care.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.002. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the corporation.
- (2) "Corporation" means the Texas Health Services Authority.

(2-a) "Covered entity" has the meaning assigned by Section 181.001.

(3) "De-identified protected health information" means protected health information that is not individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(3-a) "Disclose" has the meaning assigned by Section 181.001.

(3-b) "Health Insurance Portability and Accountability Act and Privacy Standards" has the meaning assigned by Section 181.001.

(4) "Individually identifiable health information" means individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(5) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, composed entirely of individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) an entity wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(6) "Protected health information" means protected health information as that term is defined by the privacy rule of the



Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 12, eff. September 1, 2012.

#### **SUBCHAPTER B. ADMINISTRATION**

Sec. 182.051. TEXAS HEALTH SERVICES AUTHORITY; PURPOSE. (a) The corporation is established to:

(1) promote, implement, and facilitate the voluntary and secure electronic exchange of health information; and

(2) create incentives to promote, implement, and facilitate the voluntary and secure electronic exchange of health information.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Business Organizations Code.

(c) The corporation is subject to state law governing nonprofit corporations, except that:

(1) the corporation may not be placed in receivership; and

(2) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code.

(d) Except as otherwise provided by law, all expenses of the corporation shall be paid from income of the corporation.

(e) The corporation is subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.052. APPLICATION OF SUNSET ACT. The corporation is subject to Chapter 325, Government Code. Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2015. The governor may order the dissolution of the corporation at any time the governor declares

that the purposes of the corporation have been fulfilled or that the corporation is inoperative or abandoned.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.08, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.09, eff. June 17, 2011.

Sec. 182.053. COMPOSITION OF BOARD OF DIRECTORS. (a) The corporation is governed by a board of 11 directors appointed by the governor, with the advice and consent of the senate.

(b) The governor shall also appoint at least two ex officio, nonvoting members representing the Department of State Health Services.

(c) The governor shall appoint as voting board members individuals who represent consumers, clinical laboratories, health benefit plans, hospitals, regional health information exchange initiatives, pharmacies, physicians, or rural health providers, or who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

(d) An individual may not serve on the board of the corporation if the individual serves on the board of any other governmental body in this state.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) An individual may not serve on the board of the corporation, in any capacity, if the individual has made a gift or grant, in cash or in kind, to the corporation.

(g) An individual may not serve on the board of the corporation, in any capacity, if the individual is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession or entity that is engaged in the providing of health care, the review or analysis of health care, the payment for health care services or procedures, or the providing of information technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.054. TERMS OF OFFICE. Appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.055. EXPENSES. Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the board or performing other official duties authorized by the presiding officer.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.056. OFFICERS; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest in a matter, personally or through an employer, before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. The board may not compensate, employ, or contract with any individual

who serves as a member of the board or advisory council to any other governmental body, including any agency, council, or committee, in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least twice a year.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.059. CHIEF EXECUTIVE OFFICER; PERSONNEL. The board may hire a chief executive officer. Under the direction of the board, the chief executive officer shall perform the duties required by this chapter or designated by the board. The chief executive officer may hire additional staff to carry out the responsibilities of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.060. TECHNOLOGY POLICY. The board shall implement a policy requiring the corporation to use appropriate technological solutions to improve the corporation's ability to perform its functions. The policy must ensure that the public is able to interact with the corporation on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.061. LIABILITIES OF AUTHORITY. Liabilities created by the corporation are not debts or obligations of the state, and the

corporation may not secure any liability with funds or assets of the state except as otherwise provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.062. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 182.101. GENERAL POWERS AND DUTIES. The corporation may:

(1) establish statewide health information exchange capabilities, including capabilities for electronic laboratory results, diagnostic studies, and medication history delivery, and, where applicable, promote definitions and standards for electronic interactions statewide;

(2) seek funding to:

(A) implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures; and

(B) create incentives to implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures;

(3) establish statewide health information exchange capabilities for streamlining health care administrative functions including:

(A) communicating point of care services, including laboratory results, diagnostic imaging, and prescription histories;

(B) communicating patient identification and emergency room required information in conformity with state and federal

privacy laws;

(C) real-time communication of enrollee status in relation to health plan coverage, including enrollee cost-sharing responsibilities; and

(D) current census and status of health plan contracted providers;

(4) support regional health information exchange initiatives by:

(A) identifying data and messaging standards for health information exchange;

(B) administering programs providing financial incentives, including grants and loans for the creation and support of regional health information networks, subject to available funds;

(C) providing technical expertise where appropriate;

(D) sharing intellectual property developed under Section 182.105;

(E) waiving the corporation's fees associated with intellectual property, data, expertise, and other services or materials provided to regional health information exchanges operated on a nonprofit basis; and

(F) applying operational and technical standards developed by the corporation to existing health information exchanges only on a voluntary basis, except for standards related to ensuring effective privacy and security of individually identifiable health information;

(5) identify standards for streamlining health care administrative functions across payors and providers, including electronic patient registration, communication of enrollment in health plans, and information at the point of care regarding services covered by health plans; and

(6) support the secure, electronic exchange of health information through other strategies identified by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. [1066](#)), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 12.003, eff. September 1, 2009.

Sec. 182.102. PROHIBITED ACTS. (a) The corporation has no authority and shall not engage in any of the following:

- (1) the collection and analysis of clinical data;
- (2) the comparison of physicians to other physicians, including comparisons to peer group physicians, physician groups, and physician teams, and to national specialty society adopted quality measurements;
- (3) the creation of a tool to measure physician performance compared to:
  - (A) peer group physicians on state and specialty levels; or
  - (B) objective standards;
- (4) the providing of access to aggregated, de-identified protected health information to local health information exchanges and other users of quality care studies, disease management and population health assessments;
- (5) providing to public health programs trended, aggregated, de-identified protected health information to help assess the health status of populations and the providing of regular reports of trends and important incidence of events to public health avenues for intervention, education, and prevention programs; or
- (6) the creation of evidence-based standards for the practice of medicine.

(b) The corporation has no authority and shall not disseminate information, in any manner, to the public that compares, rates, tiers, classifies, measures, or ranks a physician's performance, efficiency, or quality of practice.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.103. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The corporation shall comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of

1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(c) The corporation shall develop privacy, security, operational, and technical standards to assist health information networks in the state to ensure effective statewide privacy, data security, efficiency, and interoperability across networks. The network's standards shall be guided by reference to the standards of the Certification Commission for Healthcare Information Technology or the Health Information Technology Standards Panel, or other federally approved certification standards, that exist on May 1, 2007, as to the process of implementation, acquisition, upgrade, or installation of electronic health information technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.104. SECURITY COMPLIANCE. The corporation shall:

(1) establish appropriate security standards to protect both the transmission and the receipt of individually identifiable health information or health care data;

(2) establish appropriate security standards to protect access to any individually identifiable health information or health care data collected, assembled, or maintained by the corporation;

(3) establish the highest levels of security and protection for access to and control of individually identifiable health information, including mental health care data and data relating to specific disease status, that is governed by more stringent state or federal privacy laws; and

(4) establish policies and procedures for the corporation for taking disciplinary actions against a board member, employee, or other person with access to individually identifiable health care information that violates state or federal privacy laws related to health care information or data maintained by the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.105. INTELLECTUAL PROPERTY. The corporation shall take commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and copyrights



where appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.106. ANNUAL REPORT. The corporation shall submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee in the senate and the house of representatives. The annual report must include financial information and a progress update on the corporation's efforts to carry out its mission.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.107. FUNDING. (a) The corporation may be funded through the General Appropriations Act and may request, accept, and use gifts and grants as necessary to implement its functions.

(b) The corporation may assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. All fees must be voluntary but receipt of services provided by the corporation may be conditioned on payment of fees.

(c) The corporation may participate in other revenue-generating activities that are consistent with the corporation's purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The corporation shall develop and submit to the commission for ratification privacy and security standards for the electronic sharing of protected health information.

(b) The commission shall review and by rule adopt acceptable standards submitted for ratification under Subsection (a).

(c) Standards adopted under Subsection (b) must be designed to:

- (1) comply with the Health Insurance Portability and Accountability Act and Privacy Standards and Chapter 181;

(2) comply with any other state and federal law relating to the security and confidentiality of information electronically maintained or disclosed by a covered entity;

(3) ensure the secure maintenance and disclosure of personally identifiable health information;

(4) include strategies and procedures for disclosing personally identifiable health information; and

(5) support a level of system interoperability with existing health record databases in this state that is consistent with emerging standards.

(d) The corporation shall establish a process by which a covered entity may apply for certification by the corporation of a covered entity's past compliance with standards adopted under Subsection (b).

(e) The corporation shall publish the standards adopted under Subsection (b) on the corporation's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 13, eff. September 1, 2012.

### **TITLE 3. VITAL STATISTICS**

#### **CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 191.001. DEFINITIONS. In this title:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.002. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer the registration of vital statistics.

(b) The department shall:

(1) establish a bureau of vital statistics with suitable offices that are properly equipped for the preservation of its official records;

(2) establish a statewide system of vital statistics;

(3) provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;

(4) require the enforcement of this title and rules adopted under this title;

(5) prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and

(6) propose legislation necessary for the purposes of this title.

(c) The department may use birth records and provide those records on request to other state agencies for programs notifying mothers of young children about children's health needs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.003. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics;

(2) supervise the bureau of vital statistics; and

(3) appoint the director of the bureau of vital statistics.

(b) In an emergency, the board may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules designed to expedite that registration under disaster conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.004. STATE REGISTRAR. (a) The director of the bureau of vital statistics is the state registrar of vital statistics. The director must be a competent vital statistician.

(b) The state registrar shall prepare and issue detailed instructions necessary for the uniform observance of this title and the maintenance of a perfect system of registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.0045. FEES. (a) The bureau of vital statistics may charge fees for providing services to the public and performing other activities in connection with maintenance of the vital statistics

system, including:

(1) performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;

(2) preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; and

(3) filing a record, amendment, or affidavit under this title.

(b) The board by rule may prescribe a schedule of fees for vital statistics services. The aggregate of the amounts of the fees may not exceed the cost of administering the vital statistics system.

(c) The bureau of vital statistics shall refund to an applicant any fee received for services that the bureau cannot perform. If the money has been deposited to the credit of the vital statistics fund, the comptroller shall issue a warrant against the fund for refund of the payment on presentation of a claim signed by the state registrar.

(d) A local registrar or county clerk who issues a certified copy of a birth or death certificate shall charge the same fees as charged by the bureau of vital statistics, including the additional fee required under Subsection (e), except as provided by Subsections (g) and (h).

(e) In addition to fees collected by the bureau of vital statistics under Subsection (b), the bureau shall collect an additional \$2 fee for each of the following:

(1) issuing a certified copy of a certificate of birth;

(2) issuing a wallet-sized certification of birth; and

(3) conducting a search for a certificate of birth.

(f) Repealed by Acts 2005, 79th Leg., Ch. 263, Sec. 5(1), eff. May 30, 2005.

(g) A local registrar or county clerk that on March 31, 1995, was charging a fee for the issuance of a certified copy of a birth certificate that exceeded the fee charged by the bureau of vital statistics for the same type of certificate may continue to do so but shall not raise this fee until the fee charged by the bureau exceeds the fee charged by the local registrar or county clerk. A local registrar or county clerk to which this subsection applies shall charge the additional fee as required under Subsection (e).

(h) In addition to other fees collected under this section, a local registrar or county clerk may collect a fee not to exceed \$1 for:

- (1) preserving vital statistics records maintained by the registrar or county clerk, including birth, death, fetal death, marriage, divorce, and annulment records;
- (2) training registrar or county clerk employees regarding vital statistics records; and
- (3) ensuring the safety and security of vital statistics records.

(i) A fee under this section shall be collected by the registrar or county clerk on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., ch. 651, Sec. 2, eff. Sept. 1, 1991;  
Acts 1995, 74th Leg., ch. 76, Sec. 9.62, eff. Sept. 1, 1995; Acts  
1995, 74th Leg., ch. 305, Sec. 1, eff. Sept. 1, 1995; Acts 2003,  
78th Leg., ch. 975, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. [2962](#)), Sec. 5(1), eff. May 30, 2005.

Acts 2005, 79th Leg., Ch. 400 (S.B. [1524](#)), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1022 (H.B. [2717](#)), Sec. 3, eff. June 17, 2011.

Sec. 191.0046. FEE EXEMPTIONS. (a) On the request of a child's parent or guardian, the state registrar shall issue without fee a certificate necessary for admission to school or to secure employment. The certificate shall be limited to a statement of the child's date of birth.

(b) The state registrar shall issue without fee a certified copy of a record not otherwise prohibited by law to a veteran or to the veteran's widow, orphan, or other dependent if the copy is for use in settling a claim against the government.

(c) On court order, the state registrar may issue without fee a certified copy of a birth record in cases related to child labor or the public schools.

(d) The state registrar on request shall issue without a fee a copy of a birth or death record that is not certified to a child fatality review team or the child fatality review team committee

established under Subchapter F, Chapter 264, Family Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 191.054 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 11 (S.B. 239), Sec. 1, eff. May 3, 2005.

Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) The Department of State Health Services shall implement an efficient and effective method to verify birth information or provide a certified copy of a birth record necessary to provide services for the benefit of a minor being served by the Department of Family and Protective Services.

(b) The Department of State Health Services shall enter into a memorandum of understanding with the Department of Family and Protective Services to implement this section. Subject to Subsection (c), the terms of the memorandum of understanding must include methods for reimbursing the Department of State Health Services in an amount that is not more than the actual costs the department incurs in verifying the birth information or providing the birth record to the Department of Family and Protective Services.

(c) The Department of State Health Services may not collect a fee or other amount for verification of birth information or provision of a certified copy of the birth record under Subsection (a) for a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 23, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 1, eff. September 1, 2009.

Sec. 191.0048. VOLUNTARY CONTRIBUTION TO TEXAS HOME VISITING PROGRAM. (a) A person requesting a copy or certified copy of a birth, marriage, or divorce record may make a voluntary contribution

of \$5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the bureau of vital statistics shall include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of \$5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) Notwithstanding Section 191.0045, a local registrar or county clerk may collect the additional voluntary contribution under this section.

(d) Notwithstanding Section 191.005, the local registrar or county clerk who collects the voluntary contribution under this section shall send the voluntary contribution to the comptroller, who shall deposit the voluntary contribution in the Texas Home Visiting Program trust fund under Section 531.287, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. [1836](#)), Sec. 3, eff. June 14, 2013.

Sec. 191.005. VITAL STATISTICS FUND. (a) The vital statistics fund is in the state treasury.

(b) The legislature shall make appropriations to the department from the fund to be used to defray expenses incurred in the administration and enforcement of the system of vital statistics.

(c) All fees collected by the bureau of vital statistics shall be deposited to the credit of the vital statistics fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 53, eff. Sept. 1, 1991.

Sec. 191.006. RECORDS OF PERSONS IN HOSPITALS AND INSTITUTIONS.

(a) This section applies to each public or private hospital, almshouse, or other institution to which persons are committed by process of law or voluntarily enter for treatment of disease or for confinement.

(b) When a person is admitted to the institution, the

superintendent, manager, or other person in charge of the institution shall record, in the manner directed by the state registrar, the admitted person's personal and statistical data required by certificate forms under this title. If the person is admitted for the treatment of disease, the physician in charge shall specify for the record the nature of the disease and where, in the physician's opinion, the disease was contracted.

(c) The personal information required under Subsection (b) shall be obtained:

(1) from the person admitted to the institution, if practicable; or

(2) from the person's relatives or friends or from other persons acquainted with the facts, in as complete a manner as possible, if the information cannot be obtained from the person admitted to the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.007. REGULATION BY CERTAIN MUNICIPALITIES. The governing body of a Type A general-law municipality may:

(1) regulate the registration of marriages; and

(2) direct the return and maintenance of bills of mortality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;

(2) each public health region;

(3) rural areas;

(4) urban areas;

(5) each county; and

(6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.



Added by Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 3, eff. September 1, 2005.

**SUBCHAPTER B. RECORDS OF BIRTHS, DEATHS, AND FETAL DEATHS**

Sec. 191.021. REGISTRATION DISTRICTS. (a) The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. The registration districts are:

- (1) each justice of the peace precinct; and
- (2) each municipality with a population of 2,500 or more.

(b) To facilitate registration, the board may combine or divide registration districts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.022. LOCAL REGISTRARS. (a) The justice of the peace is the local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(b) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(c) Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths.

(d) The local registrar shall sign each report made to the bureau of vital statistics.

(e) If a local registrar fails or refuses to register each birth and death in the district or neglects duties under this title, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(f) A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit \$1.80 of that fee to the comptroller.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 305, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 1, eff. May 30, 2005.

Sec. 191.023. CONSOLIDATION OF COUNTY AND MUNICIPAL MAINTENANCE OF BIRTH AND DEATH RECORDS. (a) The duties imposed by law relating to the maintenance of birth and death records of a municipality with a population of 2,500 or more may be transferred to the county in which the municipality is located, as provided by this section.

(b) If the commissioners court adopts a resolution to transfer the duties and the governing body of the municipality subsequently adopts a concurring resolution, the county and municipality shall agree on a timetable for the transfer and shall execute the transfer in an orderly fashion.

(c) Before a commissioners court may adopt a resolution under Subsection (b), the official to whom the duties would be transferred must attest in writing that the official has sufficient resources and finances to assume those duties.

(d) If the governing body of a municipality does not adopt a concurring resolution before the 91st day after the date on which a county adopts a resolution under Subsection (b), a petition by the qualified voters of the municipality may serve as the equivalent of a concurring resolution under Subsection (b). The petition must succinctly describe the intention to consolidate county and municipal maintenance of birth and death records and must be signed by a number of qualified voters equal to at least 20 percent of the number of qualified voters voting in the most recent mayoral election.

(e) A consolidation under this section affects only the county and the municipality to which the resolutions apply. This section does not affect the apportionment of registration districts under Section 191.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.024. REPORTS OF INFORMATION. (a) On the state registrar's demand, a person, including a local registrar, physician, midwife, or funeral director, who has information relating to a

birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the department or on the original certificate.

(b) An organization or individual who has a record of births or deaths that may be useful to establish the genealogy of a resident of this state may file the record or a duly authenticated transcript of the record with the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 302 (H.B. 2061), Sec. 1, eff. June 17, 2011.

Sec. 191.025. RECORD BOOKS AND CERTIFICATES. (a) Forms for the registration of births, deaths, and fetal deaths must be approved by the department.

(b) A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. The record books must be in forms approved by the state registrar.

(c) A local registrar shall supply forms of certificates to persons who need them. The board shall establish and promulgate rules for strict accountability of birth certificates to prevent birth certificate fraud.

(d) Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

(e) A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item.

(f) The department shall require that the form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?".

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.14, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 17, Sec. 1, eff. April 25, 1997;

Acts 2001, 77th Leg., ch. 476, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 2, eff. September 1, 2005.

Sec. 191.026. LOCAL RECORDS. (a) The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction.

(b) The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office.

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter 181 or 201, Local Government Code. Except as provided by Subsection (e), the copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(d) The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records under Section 191.032.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the bureau of vital statistics; and

(2) before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the bureau's database and that each record is included in the database or otherwise accounted for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1997, 74th Leg., ch. 17, Sec. 2, eff. April 25, 1997.

Sec. 191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR. (a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.028. AMENDMENT OF CERTIFICATE. (a) A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed except as provided by Subsection (b).

(b) An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the department. The amendment shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing, except as provided by Section 192.011(b).

(c) Not later than the 30th business day after the date the department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 54, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 2, eff. September 1, 2009.

Sec. 191.029. CERTIFICATES OR REPORT SENT TO STATE REGISTRAR. On the 10th day of each month, the local registrar shall send to the state registrar:

(1) the original certificates that the local registrar registered during the preceding month; or

(2) a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.031. REVIEW OF CERTIFICATES BY STATE REGISTRAR. (a) The state registrar shall carefully examine the certificates received monthly from the local registrars.

(b) The state registrar shall require additional information to make the record complete and satisfactory if necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.032. STATE RECORDS. (a) The state registrar shall arrange, bind, and permanently preserve birth, death, and fetal death certificates in a systematic manner.

(b) The board shall adopt rules necessary to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 1, eff. Sept. 1, 1991.

Sec. 191.033. ADDENDA. (a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the bureau of vital statistics.

(b) If the state registrar attaches an addendum to an original record, the state registrar shall instruct the local registration official in whose jurisdiction the birth, death, or fetal death occurred to attach an identical addendum to any duplicate of the record in the official's custody.

(c) In this section, "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death

that occurs in the person's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.034. NOTATION OF DEATH ON BIRTH CERTIFICATE. (a) On receipt of the death certificate of a person whose birth is registered in this state, the state registrar shall conspicuously note the person's date of death on the person's birth certificate.

(b) The state registrar shall notify the county clerk of the county in which the person was born and the local registrar of the registration district in which the person was born of the person's death. On receipt of the notification of death, the county clerk or local registrar shall conspicuously note the person's date of death on the person's birth certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 2, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. [3253](#)), Sec. 1, eff. June 14, 2013.

Sec. 191.036. SPANISH SURNAME INFORMATION. (a) The purpose of this section is to:

(1) enable this state to participate in a study being conducted by a group of southwestern states to obtain information about the birth rates and mortality patterns of persons with Spanish surnames; and

(2) implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

(b) In the next official revision of the prescribed forms for birth and fetal death certificates, the department shall include the following questions and instructions:

- (1) Is the father of Spanish origin?
- (2) If yes, specify Mexican, Cuban, Puerto Rican, etc.
- (3) Is the mother of Spanish origin?
- (4) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(c) In the next official revision of the prescribed forms for death certificates, the department shall include the following

questions and instructions:

- (1) Was the decedent of Spanish origin?
- (2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. COPIES OF RECORDS**

Sec. 191.051. CERTIFIED COPIES. (a) Subject to board rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

(b) A certified copy issued under this subsection may be issued only in the form approved by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.052. CERTIFIED COPY AS EVIDENCE. A copy of a birth, death, or fetal death record registered under this title that is certified by the state registrar is prima facie evidence of the facts stated in the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.056. COPIES COLLECTED BY NATIONAL AGENCY. (a) The national agency in charge of the collection of vital statistics may obtain, without expense to the state, transcripts of vital records without payment of the fees prescribed by this chapter.

(b) The bureau of vital statistics may contract with the national agency to have copies of vital records that are filed with the bureau transcribed for that agency.

(c) The state registrar may act as special agent for the national agency to accept the use of the franking privilege and forms furnished by the national agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 191.057. RECORDS WITH ADDENDA. (a) In this section:

(1) "Copy" means a reproduction of a record made by any means.

(2) "Local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(b) If the bureau of vital statistics or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

(c) If the state registrar refuses to issue the certified copy:

(1) the state registrar shall notify the applicant of the refusal and the reason for the refusal not later than the 10th day after the date on which the state registrar receives the application; and

(2) the department shall give the applicant an opportunity for a hearing.

(d) After the hearing, the state registrar shall notify the local officials who have duplicates of the questioned record of the department's final decision. The department may order the officials to issue or refuse to issue certified copies of the record.

(e) A duty imposed on or a power granted to the state registrar under this section may be performed or exercised by a designee of the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## CHAPTER 192. BIRTH RECORDS

### SUBCHAPTER A. GENERAL REGISTRATION PROVISIONS

Sec. 192.001. REGISTRATION REQUIRED. The birth of each child born in this state shall be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.002. FORM OF BIRTH CERTIFICATE. (a) The department

shall prescribe the form and contents of the birth certificate.

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations Code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The board may adopt rules to implement this subsection.

(c) The form must include a space for recording the social security numbers of the mother and father and the signatures of the biological mother and biological father. These social security numbers and signatures are not a part of the legal birth certificate, shall be made available to the agency administering the state's plan under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and may not be used or disseminated for any purpose other than the establishment and the enforcement of child support orders.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the federal Social Security Administration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 7; Acts 1991, 72nd Leg., ch. 14, Sec. 56, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 69, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.785, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. [3253](#)), Sec. 2, eff. June 14, 2013.

Sec. 192.0021. HEIRLOOM BIRTH CERTIFICATE. (a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the

certificate. An heirloom birth certificate must contain the same information as, and have the same effect of, a certified copy of another birth record. The department shall prescribe a fee for the issuance of an heirloom birth certificate in an amount that does not exceed \$50. The heirloom birth certificate must be printed on high-quality paper with the appearance of parchment not smaller than 11 inches by 14 inches.

(b) The department shall deposit 50 percent of the proceeds from the sale of heirloom birth certificates to the credit of the childhood immunization account and the other 50 percent to the credit of the undedicated portion of the general revenue fund. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the Department of State Health Services for:

- (1) making grants to fund childhood immunizations and related education programs; and
- (2) administering this section.

(c) The department may sell an heirloom birth certificate only for an individual born in this state.

Added by Acts 1993, 73rd Leg., ch. 941, Sec. 1, eff. Aug. 30, 1993.  
Amended by:

Acts 2005, 79th Leg., Ch. 1265 (H.B. [2101](#)), Sec. 1, eff. September 1, 2005.

Sec. 192.0022. CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH.

(a) In this section:

(1) "Stillbirth" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than 20 completed weeks.

(2) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record the birth of a stillborn child.

(b) The person who is required to file a fetal death certificate under Section 193.002 shall advise the parent or parents of a stillborn child:

(1) that a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(2) that a parent may obtain a certificate of birth resulting in stillbirth by contacting the bureau of vital statistics

to request the certificate and paying the required fee; and

(3) regarding the way or ways in which a parent may contact the bureau of vital statistics to request the certificate.

(c) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the bureau of vital statistics shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

(d) A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate.

(e) The department shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate.

(f) The bureau of vital statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(g) On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate as provided by this section, the bureau of vital statistics shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate.

(h) A parent may request the bureau of vital statistics to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(i) The executive commissioner of the Health and Human Services Commission may adopt rules necessary to administer this section.

Added by Acts 2005, 79th Leg., Ch. 276 (S.B. 271), Sec. 1, eff. September 1, 2005.

Sec. 192.003. BIRTH CERTIFICATE FILED OR BIRTH REPORTED. (a) The physician, midwife, or person acting as a midwife in attendance at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.

(b) If a birth occurs in a hospital or birthing center, the

hospital administrator, the birthing center administrator, or a designee of the appropriate administrator may file the birth certificate in lieu of a person listed by Subsection (a).

(c) If there is no physician, midwife, or person acting as a midwife in attendance at a birth and if the birth does not occur in a hospital or birthing center, the following in the order listed shall report the birth to the local registrar:

(1) the father or mother of the child; or

(2) the owner or householder of the premises where the birth occurs.

(d) Except as provided by Subsection (e), a person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth.

(e) Based on a parent's religious beliefs, a parent may request that a person required to file a birth certificate or report a birth delay filing the certificate or making the report until the parent contacts the person with the child's name. If a parent does not name the child before the fifth day after the date of the birth due to the parent's religious beliefs, the parent must contact the person required to file the birth certificate or report the birth with the name of the child as soon as the child is named. A person required to file the birth certificate or report the birth who delays filing the certificate or making the report in accordance with the parent's request shall file the certificate or make the report not later than the 15th day after the date of the child's birth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 519, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(21), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 124, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 81, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 68 (H.B. 1604), Sec. 1, eff. May 17, 2005.

Sec. 192.0031. INFORMATION OF BIRTH TO SCHOOL-AGE MOTHER. (a) Notwithstanding Subchapter C, Chapter 552, Government Code, the

department shall notify the commissioner of education of each birth to a school-age mother. The commissioner may notify the school district in which a school-age mother resides of each birth to a school-age mother.

(b) The department may not notify the commissioner of a birth to a school-age mother if:

- (1) the child died at birth; or
- (2) the child was placed for adoption.

(c) A notification under this section must include the name and address of the mother, the father, if the father is of school age and is named on the birth certificate, and the person born. Reports under this section shall be sent at least quarterly.

Added by Acts 1993, 73rd Leg., ch. 907, Sec. 6, eff. June 19, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(101), eff. Sept. 1, 1995.

Sec. 192.004. INFORMATION OBTAINED BY LOCAL REGISTRAR. (a) The local registrar shall obtain the information necessary to prepare the birth certificate from the person reporting a birth or from another person with the required knowledge if:

- (1) the birth is reported under Section 192.003(c); or
- (2) a person who files a certificate under Section 192.003(a) or 192.003(b) cannot by diligent inquiry obtain an item of information required for the certificate.

(b) A person from whom a local registrar requests necessary information shall answer correctly to the best of the person's knowledge. On request of the local registrar, a person who makes a statement under this section shall verify the statement by signing it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 2, eff. Sept. 1, 1993.

Sec. 192.005. RECORD OF PATERNITY. (a) The items on a birth certificate relating to the child's father shall be completed only if:

- (1) the child's mother was married to the father:
  - (A) at the time of the child's conception;

- (B) at the time of the child's birth; or
- (C) after the child's birth;

(2) paternity is established by order of a court of competent jurisdiction; or

(3) a valid acknowledgment of paternity executed by the father has been filed with the bureau of vital statistics as provided by Subchapter D, Chapter 160, Family Code.

(b) Repealed by Acts 2003, 78th Leg., ch. 610, Sec. 23, eff. Sept. 1, 2003.

(c) A person may apply to the state registrar for the removal of any indication of the absence of paternity of a child who has no presumed father from the person's birth record.

(d) If the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the state registrar shall notify the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 8; Acts 1993, 73rd Leg., ch. 519, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.42, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 21, 23, eff. Sept. 1, 2003.

Sec. 192.0051. REPORT OF DETERMINATION OF PATERNITY. (a) A report of each determination of paternity in this state shall be filed with the state registrar.

(b) On a determination of paternity, the petitioner shall provide the clerk of the court in which the decree was granted with the information necessary to prepare the report. The clerk shall:

(1) report the determination on a form or in a manner provided by the department; and

(2) complete the report immediately after the decree becomes final.

(c) On completion of the report, the clerk of the court shall forward to the state registrar the report for each decree that became final in that court.

Added by Acts 1993, 73rd Leg., ch. 519, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 70, eff. Sept. 1, 1999.

Sec. 192.006. SUPPLEMENTARY BIRTH CERTIFICATES. (a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:

(1) becomes the child of the person's father by the subsequent marriage of the person's parents;

(2) has the person's parentage determined by a court of competent jurisdiction; or

(3) is adopted under the laws of any state.

(b) An application for a supplementary birth certificate may be filed by:

(1) an adult whose status is changed; or

(2) a legal representative of the person whose status is changed.

(c) The state registrar shall require proof of the change in status that the board by rule may prescribe.

(d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with board rules.

(e) In accordance with board rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 57, 58, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 71, eff. Sept. 1, 1999.

Sec. 192.007. SUPPLEMENTARY CERTIFICATES FOR CHILD WHO DIES BEFORE ADOPTION. (a) If a child in the process of being adopted in this state dies before the adoption is completed, the persons who attempted to adopt the child may request the state registrar to file supplementary birth and death certificates for the child.

(b) Persons making a request under this section must include with the request:

(1) sufficient information to prove that they attempted to adopt the child and that the child died before the adoption was completed;

(2) a copy of an irrevocable affidavit of relinquishment of parental rights relating to the child;

(3) a copy of the affidavit of the status of the child, if



applicable; and

(4) any other information required by the department.

(c) On receipt of the information required by Subsection (b), the state registrar shall complete birth and death certificates as if the child had been adopted by court decree and then died.

(d) In the absence of evidence to the contrary, compliance with this section and the completion of the birth certificate constitute adoption by estoppel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.008. BIRTH RECORDS OF ADOPTED PERSON. (a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents, one of whom must be a female, named as the mother, and the other of whom must be a male, named as the father. This subsection does not prohibit a single individual, male or female, from adopting a child. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

(b) After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate.

(c) The board shall adopt rules and procedures to ensure that birth records and indexes under the control of the department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Subchapter E, Chapter 162, Family Code, or with a court order under this section.

(d) Except as provided by Subsections (e) and (f), only the court that granted the adoption may order access to an original birth certificate and the filed documents on which a supplementary certificate is based.

(e) A person applying for access to an original birth certificate and the filed documents on which the supplementary certificate is based is entitled to know the identity and location of the court that granted the adoption. If that information is not on file, the state registrar shall give the person an affidavit stating

that the information is not on file with the state registrar. Any court of competent jurisdiction to which the person presents the affidavit may order the access.

(f) An adult adoptee who is applying for access to the person's original birth certificate and who knows the identity of each parent named on the original birth certificate is entitled to a noncertified copy of the original birth certificate without obtaining a court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 561, Sec. 29, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 480 (H.B. 240), Sec. 1, eff. September 1, 2005.

Sec. 192.009. CERTIFICATE OF ADOPTION, ANNULMENT OF ADOPTION, OR REVOCATION OF ADOPTION. (a) A certificate of each adoption, annulment of adoption, and revocation of adoption decreed in this state shall be filed with the state registrar.

(b) When a petition for adoption, annulment of adoption, or revocation of adoption is granted, the petitioner shall supply the clerk of the court the information necessary to prepare the certificate. The clerk shall:

(1) prepare the certificate on a form furnished by the department that provides the information prescribed by the department; and

(2) complete the certificate immediately after the decree becomes final.

(c) Not later than the 10th day of each month, the clerk shall forward to the state registrar the certificates that the clerk completed for decrees that became final in the preceding calendar month.

(d) If the bureau of vital statistics determines that a certificate filed with the state registrar under this section requires correction, the bureau shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the bureau. If there is no

attorney of record, the bureau shall mail the certificate to the clerk of the court for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 2003.

Sec. 192.010. CHANGE OF NAME. (a) Subject to board rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the board by rule may prescribe.

(c) Repealed by Acts 1991, 72nd Leg., ch. 14, Sec. 59, eff. Sept. 1, 1991.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 59, eff. Sept. 1, 1991.

Sec. 192.011. AMENDING BIRTH CERTIFICATE. (a) This section applies to an amending birth certificate that is filed under Section 191.028 and that completes or corrects information relating to the person's sex, color, or race.

(b) On the request of the person or the person's legal representative, the state registrar, local registrar, or other person who issues birth certificates shall issue a birth certificate that incorporates the completed or corrected information instead of issuing a copy of the original or supplementary certificate with an amending certificate attached.

(c) The department shall prescribe the form for certificates issued under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.012. RECORD OF ACKNOWLEDGMENT OF PATERNITY. (a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

(1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter C, Chapter 160, Family Code; and

(2) provide oral and written information to the child's mother and putative father about:

(A) establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

(B) the availability of child support services.

(b) The local registrar shall transmit the acknowledgment of paternity to the state registrar.

(c) The state registrar shall record the information contained in the acknowledgment of paternity and transmit the information to the Title IV-D agency.

(d) The Title IV-D agency may use the information contained in the acknowledgment of paternity for any purpose directly connected with providing child support services under Chapter 231, Family Code.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 72, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. DELAYED REGISTRATION**

Sec. 192.021. DELAY LESS THAN ONE YEAR. (a) A birth that occurred more than five days but less than one year before the date of an application for registration may be recorded on a birth certificate and submitted for filing to the local registrar of the registration district in which the birth occurred.

(b) The local registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The local registrar may accept the certificate for filing if the evidence required by the local registrar is submitted.

(c) Registration under this section is subject to board rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR. Subject to board rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to

the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.023. DELAY OF MORE THAN ONE BUT LESS THAN FOUR YEARS.

(a) A birth that occurred at least one year but less than four years before the date of the application for registration shall be recorded on a birth certificate in the form prescribed by the state registrar and submitted to the state registrar for filing.

(b) The state registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The state registrar may accept the certificate for filing if the evidence required by the state registrar is submitted.

(c) A birth certificate filed under this section shall be marked "Delayed" and must show on its face the date of registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.024. DELAY OF FOUR YEARS OR MORE. (a) A birth that occurred four or more years before the date of the application for registration shall be recorded on a form entitled "Delayed Certificate of Birth." The department shall prescribe and furnish the form.

(b) The form shall provide for:

- (1) the name and sex of the person whose birth is to be registered;
- (2) the place and date of the person's birth;
- (3) the names of the person's parents;
- (4) the place of birth of each parent;
- (5) the date of registration; and
- (6) any other information required by the state registrar.

(c) The information on the form must be subscribed and sworn to, before an official authorized to administer oaths, by:

- (1) the person whose birth is to be registered; or
- (2) the person's parent, legal guardian, or legal representative if the person is incompetent to swear to the information.

(d) The state registrar shall add to a certificate submitted

under this section:

(1) a description of each document submitted in support of the delayed registration, including the title of the document or the type of document;

(2) the name and address of the affiant if the document is an affidavit of personal knowledge; and

(3) if the document is a record, or certified copy of a record, of a business entry:

(A) the name and address of the custodian of the record;

(B) the date of the original entry; and

(C) the date of the certified copy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.025. SUPPORTING DOCUMENTS. (a) The state registrar shall accept an application under Section 192.024 if the applicant's statement of date and place of birth and parentage is established to the state registrar's satisfaction by the evidence required by this section.

(b) The certification of the state registrar shall be added to a certificate accepted for filing under this section.

(c) If the birth occurred at least four years but less than 15 years before the date of the application:

(1) the statement of date and place of birth must be supported by at least two documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(d) If the birth occurred 15 or more years before the date of the application:

(1) the statement of date and place of birth must be supported by at least three documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(e) A document accepted as evidence under this section, other

than an affidavit of personal knowledge, must be at least five years old. A copy or abstract of the document may be accepted if certified as true and correct by the custodian of the document.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.026. REJECTION OR RETURN OF APPLICATION. (a) The state registrar may not register a delayed birth certificate if:

(1) the applicant does not submit the documentary evidence required by Section 192.025; or

(2) the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence.

(b) On the state registrar's refusal to register a certificate under Subsection (a), the state registrar shall:

(1) furnish the applicant a statement of the reasons for the refusal; and

(2) advise the applicant of the right to appeal to the county court for probate matters of the county in which the birth occurred, as provided by Section 192.027.

(c) If an application to file a delayed birth certificate is not actively pursued, the state registrar shall:

(1) return the application, supporting evidence, and any related instruments to the applicant; or

(2) make another disposition of those documents that the state registrar considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.027. REGISTRATION BY JUDICIAL ORDER. (a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the county probate court of the county in which the birth occurred for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must be on a form prescribed and furnished by the department.

(c) The petition must be accompanied by:

(1) a statement of the state registrar issued under Section 192.026(b)(1); and

(2) the documentary evidence submitted to the state registrar in support of the application.

(d) If the court finds from the evidence presented that the person was born in this state, the court shall:

- (1) make findings as to the person's date and place of birth and parentage;
- (2) make other findings required by the case; and
- (3) enter an order on a form prescribed and furnished by the department to establish a record of birth.

(e) An order under this section must include:

- (1) the birth data to be registered;
- (2) a description of the evidence presented; and
- (3) the date of the court's action.

(f) Not later than the seventh day after the date on which the order is entered, the clerk of the court shall forward the order to the state registrar. The state registrar shall register the order, which is the record of birth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### CHAPTER 193. DEATH RECORDS

Sec. 193.001. FORM OF CERTIFICATE. (a) The department shall prescribe the form and contents of death certificates and fetal death certificates.

(a-1) In prescribing each form under Subsection (a), the department shall ensure that the form instructs the person required to file the death certificate or fetal death certificate to:

- (1) enter the date in the standard order of "month, day, year"; and
- (2) spell out the name of the month when entering the date.

(b) The social security number shall be recorded on the death certificate and on any other records related to the death.

(c) The department shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(d) The bureau of vital statistics and each local registrar shall make the information provided under Subsection (c) available to



the public and may charge a fee in an amount prescribed under Section 191.0045 for providing that service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 502, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 73, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 557 (H.B. 2940), Sec. 1, eff. June 17, 2011.

Sec. 193.002. PERSON REQUIRED TO FILE. The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

- (1) obtain and file the death certificate or fetal death certificate;
- (2) enter on the certificate the information relating to disposition of the body;
- (3) sign the certificate; and
- (4) file the certificate electronically as specified by the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 1, eff. September 1, 2007.

Sec. 193.003. TIME AND PLACE FOR FILING DEATH CERTIFICATE. (a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

- (1) the death occurs; or
- (2) the body is found, if the place of death is not known.

(b) Subject to board rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

- (1) the fetal death occurs; or
- (2) the body is found, if the place of fetal death is not known.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 193.004. PERSONAL AND MEDICAL INFORMATION. (a) The person required to file a death certificate shall obtain the required personal information from a competent person with knowledge of the facts.

(b) The person required to file a fetal death certificate shall obtain the required personal information from the person best qualified to furnish the information.

(c) A person required to obtain information under this section shall obtain the information over the signature of the person who furnishes the information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 1, eff. Sept. 1, 1997.

Sec. 193.0041. DISCIPLINARY ACTION PROHIBITED. A state agency that licenses a person required to file a death certificate under this chapter may not take disciplinary action against the person for failure to timely file the certificate if the person supplies written documentation that the person has made a good faith effort to file the certificate within the time required by Section 193.003(a) and the failure to timely file the certificate results from circumstances beyond the person's control.

Added by Acts 2007, 80th Leg., R.S., Ch. 636 (H.B. 755), Sec. 1, eff. September 1, 2007.

Sec. 193.005. PERSONAL INFORMATION. (a) A person required to file a death certificate or fetal death certificate shall obtain the required medical certification from an attending physician if the death occurred under medical attendance for the care and treatment of the condition or disease process that contributed to the death.

(b) The attending physician shall complete the medical certification not later than five days after receiving the death certificate.

(c) An associate physician, the chief medical officer of the institution where the death occurred, or the physician who performed

an autopsy on the decedent may complete the medical certification if:

- (1) the attending physician is unavailable;
- (2) the attending physician approves; and
- (3) the person completing the medical certification has

access to the medical history of the case and the death is due to natural causes.

(d) If a death or fetal death occurs without medical attendance or is otherwise subject to Chapter 49, Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate authority of the death.

(e) A person conducting an inquest required by Chapter 49, Code of Criminal Procedure, shall:

- (1) complete the medical certification not later than five days after receiving the death or fetal death certificate; and
- (2) state on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

(f) If the identity of the decedent is unknown, the person conducting the inquest shall obtain and forward to the Department of Public Safety:

- (1) the decedent's fingerprints;
- (2) information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks; and
- (3) other facts required for assistance in identifying the decedent.

(g) If the medical certification cannot be completed in a timely manner, the person required to complete the medical certification shall give the funeral director or the person acting as funeral director notice of the reason for the delay. Final disposition of the body may not be made unless specifically authorized by the person responsible for completing the medical certification.

(h) The person completing the medical certification shall submit the information and attest to its validity using an electronic process approved by the state registrar.

(i) On receipt of autopsy results or other information that would change the information in the medical certification on the death certificate, the appropriate certifier shall immediately report

the change in a manner prescribed by the department to amend the death certificate.

(j) The death certificate of a decedent who was an inmate of the Texas Department of Criminal Justice at the time of death and who was lawfully executed shall classify the manner of death as death caused by judicially ordered execution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 285 (H.B. 93), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 2, eff. September 1, 2007.

Sec. 193.006. INFORMATION RELATING TO VETERANS. (a) This section applies to the death certificate of a person who:

- (1) served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas;
- (2) was the wife or widow of a person who served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas; or
- (3) at the time of death was in the service of the United States.

(b) The funeral director or the person in charge of the disposition of the body shall supply on the reverse side of the death certificate:

- (1) the organization in which service was rendered;
- (2) the serial number on the discharge papers or the adjusted service certificate; and
- (3) the name and mailing address of the decedent's next of kin or next friend.

(c) When the death certificate is filed locally, the local registrar shall immediately notify the nearest congressionally chartered veteran organizations.

(d) When the death certificate is filed with the bureau of vital statistics, the state registrar shall notify the Texas Veterans Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 260, Sec. 3, eff. Sept. 1, 1991.

Sec. 193.007. DELAYED REGISTRATION OF DEATH. (a) A death that occurred more than 10 days but less than one year before the date of an application for registration of death may be recorded on a death certificate and submitted for filing with the local registrar of the registration district in which the death occurred.

(b) To file a record of a death that occurred in this state but was not registered within one year of the date of death, a person shall submit a record of the death to the county probate court in the county in which the death occurred.

(c) The bureau of vital statistics shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the bureau. The state registrar may accept a certificate that is verified as provided by this section.

(d) The certificate must be supported by the affidavit of:

(1) the physician last in attendance on the decedent or the funeral director who buried the body; or

(2) if the affidavit of the physician or funeral director cannot be obtained:

(A) any person who was acquainted with the facts surrounding the death when the death occurred; and

(B) another person who was acquainted with the facts surrounding the death but who is not related to the decedent by consanguinity or affinity, as determined under Chapter 573, Government Code.

(e) For each application under this section, the court shall collect a \$1 fee. The court retains 50 cents of the fee and the remaining 50 cents is allocated to the clerk of the court for recording the certificate.

(f) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the bureau of vital statistics:

(1) the certificate; and

(2) an order from the court that the state registrar accept the certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 29, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1425, Sec. 3, eff. Sept. 1, 1997.

Sec. 193.008. BURIAL-TRANSIT PERMIT. (a) A burial-transit permit issued under the law and rules of a place outside of this state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 193.009. BURIAL RECORDS. (a) The person in charge of premises on which interments are made shall keep a record of the bodies interred or otherwise disposed of on the premises.

(b) The records must include for each decedent:

- (1) the decedent's name;
- (2) the place of death;
- (3) the date of interment or disposal;
- (4) the name and address of the funeral director; and
- (5) any other information required by the state registrar.

(c) The records are open to official inspection at all times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 193.010. CERTIFICATE OF DEATH BY CATASTROPHE. (a) In this section, "catastrophe" means the occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive, including:

- (1) flood, earthquake, tornado, or other natural disaster;
- (2) explosion, fire, or destruction of a building;
- (3) the crash of a motor vehicle, train, or airplane

involving more than one person; or

(4) the overtaking of more than one person by fire, water, earth, or other substance.

(b) A local registrar shall issue and file a certificate of death by catastrophe for a person if:

(1) an affidavit is submitted to the registrar stating that:

(A) the person was last reasonably believed to be at the scene of a catastrophe;

(B) at least 10 days have passed since the day of the catastrophe;

(C) a diligent search has been made by a governmental authority and the authority has concluded the search for the person;

(D) the catastrophe was not intentionally caused by the person; and

(E) the affiant:

(i) does not know whether the person is alive or dead;

(ii) has not received any information about the person's status since the catastrophe and, barring the person's death, would have received information about the person's status;

(iii) is not aware of any custody or guardianship issues involving the person, if the person is a minor or a person for whom a guardian has been appointed; and

(iv) is not aware of any reasonable motive for the person to disappear or for another person to abduct the person; and

(2) a written statement signed by an agent of the governmental authority that conducts a search under Subdivision (1)(C) is submitted to the registrar stating that the governmental authority conducted and concluded a search for the person.

(c) The department may issue a certificate of death by catastrophe for a minor or a person for whom a guardian has been appointed who is the subject of a custody or guardianship dispute only if all parties to the dispute submit an affidavit under Subsection (b).

(d) An insurer shall accept as proof of death of an insured a certificate of death by catastrophe issued under this section.

Added by Acts 2003, 78th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 2003.

Sec. 193.011. MEMORANDUM OF UNDERSTANDING ON SUICIDE DATA. (a) In this section, "authorized entity" means a medical examiner, a local registrar, a local health authority, a local mental health authority, a community mental health center, a mental health center that acts as a collection agent for the suicide data reported by community mental health centers, or any other political subdivision of this state.

(b) An authorized entity may enter into a memorandum of understanding with another authorized entity to share suicide data that does not name a deceased individual. The shared data may include:

- (1) the deceased individual's date of birth, race or national origin, gender, and zip code of residence;
- (2) any school or college the deceased individual was attending at the time of death;
- (3) the suicide method used by the deceased individual;
- (4) the deceased individual's status as a veteran or member of the armed services; and
- (5) the date of the deceased individual's death.

(c) The suicide data an authorized entity receives or provides under Subsection (b) is not confidential.

(d) An authorized entity that receives suicide data under a memorandum of understanding authorized by this section may periodically release suicide data that does not name a deceased individual to an agency or organization with recognized expertise in suicide prevention. The agency or organization may use suicide data received by the agency or organization under this subsection only for suicide prevention purposes.

(e) An authorized entity or an employee or agent of an authorized entity is not civilly or criminally liable for receiving or providing suicide data that does not name a deceased individual and that may be shared under a memorandum of understanding authorized by this section.

(f) This section does not prohibit the sharing of data as authorized by other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 100 (H.B. 1067), Sec. 2, eff. May 23, 2009.



**CHAPTER 194. MARRIAGE AND DIVORCE RECORDS**

Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk shall file with the bureau of vital statistics a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies.

(b) The county clerk shall file with the bureau of vital statistics a copy of each declaration of informal marriage executed under Section 1.92, Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 5, eff. September 1, 2013.

Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The board by rule shall prescribe the format and content of the form used for the marriage license application.

(b) The bureau of vital statistics shall print and distribute the forms to each county clerk throughout the state.

(c) The form adopted by the board shall replace locally adopted forms.

(d) A county clerk may reproduce the board's form locally.

Added by Acts 1991, 72nd Leg., ch. 96, Sec. 1, eff. Sept. 1, 1991.

Sec. 194.002. REPORT OF DIVORCE OR ANNULMENT. (a) The bureau of vital statistics shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

- (1) each party's:
  - (A) full name;
  - (B) usual residence;
  - (C) age;
  - (D) place of birth;
  - (E) color or race; and

- (F) number of children;
- (2) the date and place of the parties' marriage;
- (3) the date the divorce or annulment of marriage was granted; and
- (4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The bureau of vital statistics shall furnish sufficient copies of the form to each district clerk.

(c) When an attorney presents a final judgment for a divorce or annulment of marriage to a court for a final decree, the attorney shall:

- (1) enter on the form the information required under Subsection (a); and
- (2) submit the report to the district clerk with the final judgment.

(d) Not later than the ninth day of each month, each district clerk shall file with the bureau of vital statistics a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the bureau.

(e) For each report that a district clerk files with the bureau of vital statistics under this section, the clerk may collect a \$1 fee as costs in the case in which the divorce or annulment of marriage is granted.

(f) If the bureau of vital statistics determines that a report filed with the bureau under this section requires correction, the bureau shall mail the report form directly to an attorney of record with respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the bureau. If there is no attorney of record, the bureau shall mail the report form to the district clerk for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 186 (H.B. [723](#)), Sec. 1, eff. May 27, 2005.

Sec. 194.003. STATE INDEX. (a) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 194.004. RELEASE OF INFORMATION. (a) The bureau of vital statistics shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The bureau of vital statistics may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

(c) Repealed by Acts 1991, 72nd Leg., ch. 14, Sec. 61, eff. Sept. 1, 1991.

(d) Repealed by Acts 1991, 72nd Leg., ch. 14, Sec. 61, eff. Sept. 1, 1991.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 61, eff. Sept. 1, 1991.

Sec. 194.005. HEIRLOOM WEDDING ANNIVERSARY CERTIFICATE. (a) The department shall promote the sale of an heirloom wedding anniversary certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate.

(b) The department shall prescribe a \$50 fee for the issuance of an heirloom wedding anniversary certificate.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules designating certain milestone wedding anniversary dates and shall design and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

(d) The department shall create an heirloom wedding anniversary

certificate ordering system that includes printed order forms available through the department and an online ordering system.

(e) An heirloom wedding anniversary certificate produced by the department under this section must be printed on parchment paper and be not smaller than 11 inches by 14 inches in size.

(f) An heirloom wedding anniversary certificate produced by the department under this section is not a marriage license under this chapter or Chapter 2, Family Code, and does not establish and may not be used to establish a marriage relationship.

(g) The department shall deposit proceeds it receives from the issuance of heirloom wedding anniversary certificates to the credit of the childhood immunization account. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the department for:

- (1) making grants to fund childhood immunizations and related education programs; and
- (2) administering this section.

Added by Acts 2005, 79th Leg., Ch. 1264 (H.B. [2100](#)), Sec. 1, eff. September 1, 2005.

#### **CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING**

Sec. 195.001. ENFORCEMENT OF TITLE; REPORTS BY LOCAL REGISTRAR. (a) The local registrar in each local registration district shall enforce this title under the supervision and direction of the state registrar.

(b) A local registrar shall report immediately to the state registrar a violation of this title of which the local registrar has knowledge by observation, by complaint of another person, or by other means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 195.002. SUPERVISION AND INVESTIGATION BY STATE REGISTRAR. (a) The state registrar shall execute this title throughout the state. To ensure uniform compliance with this title, the state registrar has supervisory power over local registrars, deputy registrars, and subregistrars.

(b) The state registrar or the state registrar's representative

may investigate cases of irregularity or violations of law. On request, any other registrar shall aid in the investigation.

(c) If the state registrar considers it necessary, the state registrar shall report a violation of this title to the appropriate district or county attorney for prosecution. The report must include a statement of the facts and circumstances. The district or county attorney shall immediately initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation.

(d) On the request of the state registrar, the attorney general shall assist in enforcing this title.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 195.003. FALSE RECORDS. (a) A person commits an offense if the person intentionally or knowingly makes a false statement or directs another person to make a false statement in:

- (1) a certificate, record, or report required under this title;
- (2) an application for an amendment of a certificate, record, or report required under this title;
- (3) an application for a delayed birth certificate or delayed death certificate; or
- (4) an application for a certified copy of a vital record.

(b) A person commits an offense if the person intentionally or knowingly supplies false information, or intentionally or knowingly creates a false record, or directs another person to supply false information or create a false record, for use in the preparation of a certificate, record, report, or amendment under this title.

(c) A person commits an offense if the person, without lawful authority and with intent to deceive, makes, counterfeits, alters, amends, or mutilates or directs another person to make, counterfeit, alter, amend, or mutilate:

- (1) a certificate, record, or report required under this title; or
- (2) a certified copy of a certificate, record, or report required under this title.

(d) A person commits an offense if the person, for purposes of deception, intentionally or knowingly obtains, possesses, uses,

sells, or furnishes, or attempts or directs another person to attempt to obtain, possess, use, sell, or furnish a certificate, record, or report required under this title, or a certified copy of a certificate, record, or report required under this title, if the document:

(1) is made, counterfeited, altered, amended, or mutilated without lawful authority and with intent to deceive;

(2) is false in whole or in part; or

(3) relates to the birth of another individual.

(e) A person commits an offense if the person intentionally or knowingly fraudulently identifies himself or herself to obtain or return registration forms, certificates, or any other forms required under this title.

(f) An offense under this section is a felony of the third degree.

(g) In this section, "person" means an individual, corporation, or association.

(h) If a person is convicted of an offense under this section, the court shall order as a condition of probation that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery, and the Texas Department of Criminal Justice shall require as a condition of parole that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.15, eff. Sept. 1, 1991.

Sec. 195.004. FAILURE TO PERFORM DUTY. (a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or subregistrar commits an offense if that person fails, neglects, or refuses to

perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) Except as provided by Subsection (d-1), an offense under this section is a Class C misdemeanor.

(d-1) An offense under this section for failure to perform a duty required by Section 192.003 is a Class A misdemeanor.

(e) In this section, "person" means an individual, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 3, eff. September 1, 2011.

Sec. 195.005. DISCLOSURE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person knowingly violates Section 192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 62, eff. Sept. 1, 1991.

#### **TITLE 4. HEALTH FACILITIES**

##### **SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING HEALTH FACILITIES**

##### **CHAPTER 221. HEALTH FACILITIES DEVELOPMENT ACT**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 221.001. SHORT TITLE. This chapter may be cited as the Health Facilities Development Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.002. PURPOSE; CONSTRUCTION. (a) The purpose of this chapter is to enable a municipality, county, or hospital district to create a corporation with the power to provide, expand, and improve health facilities that the corporation determines are needed to improve the adequacy, cost, and accessibility of health care,

research, and education in the state.

(b) The legislature intends that a corporation created under this chapter be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of its sponsoring entity for the purposes of Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103). This chapter and the rules and rulings issued under this chapter shall be construed according to this intent.

(c) This chapter shall be liberally construed to conform to the intent of the legislature expressed by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.003. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of a development corporation.

(2) "Bonds" includes notes, interim certificates, or other evidences of indebtedness of a development corporation issued under this chapter.

(3) "Cash management" means borrowing by a development corporation on behalf of a user to allow the user to manage the user's need for cash.

(4) "Cost," as applied to a health facility, includes:

(A) the cost of acquisition of land, a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land;

(B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a structure used as, or in connection with, the health facility;

(C) the cost of site preparation, including demolition or removal of a structure as necessary or incident to providing the health facility;

(D) the cost of architectural, engineering, legal, or other related services;

(E) preparation cost of plans, specifications, studies, surveys, cost and revenue estimates, and other expenses necessary or incident to planning, providing, or determining the feasibility of the health facility;

(F) the cost of machinery, equipment, furnishings, and



facilities necessary or incident to placing the health facility in operation;

(G) finance charges, interest, and marketing and start-up costs, before and during construction and for not more than two years after the date that construction is completed;

(H) costs incurred in connection with financing the health facility, including:

- (i) amounts paid under Sections 221.061(c) and (d);
- (ii) financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements;
- (iii) the cost of a title insurance policy;
- (iv) the cost of printing, engraving, and reproduction services; and
- (v) the cost of a trustee's or paying agent's initial or acceptance fee;

(I) a cost of the development corporation incurred in connection with providing the health facility, including reasonable amounts to reimburse the development corporation for time spent by its agents or employees relating to providing the health facility and its financing; and

(J) the cost of financing, establishing, and funding a reserve fund for a self-insurance or risk management program, including the cost of preparation of a study, survey, or estimate of cost, revenue, risk, or liability or other cost or expense necessary or incident to planning, providing, or determining the feasibility and continuing program and operating costs of a self-insurance or risk management program.

(5) "Development corporation" means a health facilities development corporation created under this chapter.

(6) "Director" means a member of the board of directors.

(7) "District" means a hospital district created under state law.

(8) "Health facility" means property or an interest in property for which the board of directors finds that financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping is required, necessary, or convenient for health care, research, or education, including:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

- (B) a structure suitable for use as a:
- (i) hospital, clinic, or health facility;
  - (ii) nursing home;
  - (iii) extended-care, outpatient, or rehabilitation facility;
  - (iv) pharmacy;
  - (v) medical or dental laboratory;
  - (vi) physicians' office building;
  - (vii) laundry, administrative, computer, communication, fire-fighting or fire-prevention, food service and preparation, storage, utility, or x-ray facility;
  - (viii) parking facility or area;
  - (ix) building related to a health care or health-care-related facility or system;
  - (x) multiunit housing facility for medical staff, nurses, interns, and other employees of a health care or health-care-related facility or system, for patients of a health care facility, or for relatives of those persons; or
  - (xi) medical or dental research or training facility or other facility used in the education or training of health care personnel;
- (C) property or material used in landscaping, equipping, or furnishing a health care or health-care-related facility or similar items necessary or convenient for the operation of such a facility;
- (D) an adult foster care facility, life care facility, retirement home, retirement village, home for the aging, or other facility that undertakes to furnish shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to an individual for more than one year; and
- (E) any other structure, facility, or equipment related to or essential to the operation of a health care or health-care-related facility.
- (9) "Resolution" means an action, including an order or ordinance, of a sponsoring entity's governing body.
- (10) "Sponsoring entity" means a municipality, county, or district.
- (11) "User" means a person who, as owner, lessee, or manager or through other authority, will occupy, operate, manage, or

employ a health facility after the facility is financed, acquired, or constructed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.004. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the federal or state constitution, a development corporation by resolution may provide an alternate procedure that conforms to the constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.005. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the police powers provided by law to the state, a municipality, or other political subdivision of the state or an official or agency of the state, a municipality, or other political subdivision of the state over property of a corporation.

(b) This chapter does not exempt a corporation or user from compliance with Chapter 104 or 225.

(c) A sponsoring entity or development corporation may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. CREATION AND OPERATION OF DEVELOPMENT CORPORATION**

Sec. 221.011. AUTHORITY TO CREATE. (a) A sponsoring entity may create one or more nonmember, nonstock development corporations for the sole public purpose of acquiring, constructing, providing, improving, financing, and refinancing a health facility to assist the maintenance of public health.

(b) The sponsoring entity may use the development corporation to:

(1) provide a health facility to promote and develop health care, research, and education for the public purpose of promoting the health and welfare of state citizens; and

(2) issue bonds on the sponsoring entity's behalf to

finance the cost of the health facility.

(c) The sponsoring entity may not lend its credit or grant public money or other thing of value in aid of a development corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.012. PROCEDURE. (a) If the governing body of a sponsoring entity determines that it is in the public interest and to the benefit of the sponsoring entity's residents and the citizens of this state that a development corporation be created to promote and develop new, expanded, or improved health facilities to assist the maintenance of the public health and welfare, the governing body, by resolution stating that determination, may authorize and approve creation of a development corporation, and shall approve proposed articles of incorporation for the development corporation.

(b) No fewer than three residents of the sponsoring entity who are each at least 18 years of age may act as incorporators of the development corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.013. ARTICLES OF INCORPORATION. (a) The articles of incorporation of a development corporation must include:

- (1) the corporation's name;
- (2) a statement that the corporation is a nonprofit public corporation;
- (3) the duration of the corporation, which may be perpetual;
- (4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance a health facility to assist the maintenance of the public health;
- (5) a statement that the corporation has no members and is a nonstock corporation;
- (6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors on the initial board of directors and those directors' names and addresses;

(8) each incorporator's name and street address;

(9) the sponsoring entity's name and address; and

(10) a statement that the sponsoring entity by resolution has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation, and has approved the articles of incorporation.

(b) The corporate powers enumerated in this chapter are not required to be included in the articles of incorporation.

(c) The articles of incorporation may include provisions for the regulation of the internal affairs of the development corporation, including a provision required or permitted by this chapter to be in the bylaws.

(d) Except as provided by Subsection (e), if a bylaw conflicts with the articles of incorporation, the articles of incorporation control.

(e) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to those articles, the change may be made by amendment to the bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.014. CERTIFICATE OF INCORPORATION. (a) The incorporators shall deliver to the secretary of state the original and two copies of the articles of incorporation and a certified copy of the resolution by the sponsoring entity's governing body approving the articles of incorporation.

(b) If the secretary of state finds that the articles of incorporation comply with this chapter and have been approved by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of incorporation with a copy of the articles of incorporation attached to each.

(c) The secretary of state shall deliver a certificate of

incorporation, with a copy of the articles of incorporation attached, to the incorporators or their representative and to the sponsoring entity's governing body.

(d) The development corporation's existence begins on issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been performed and that the corporation has been incorporated under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.015. ORGANIZATIONAL MEETING. (a) After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors named in the articles of incorporation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for any other purposes.

(b) Not later than the sixth day before the date of the meeting, the incorporators shall mail notice, postage prepaid, to each director of the time and place of the meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) Articles of incorporation may be amended to contain any provision that is lawful under this chapter if the sponsoring entity's governing body by appropriate resolution determines that the amendment is advisable and authorizes or directs that an amendment be made.

(b) The development corporation's president or vice-president and secretary or assistant secretary, or the presiding officer and the secretary or clerk of the sponsoring entity's governing body, shall execute articles of amendment on behalf of the development corporation. An officer signing the articles of amendment shall verify those articles.

(c) The articles of amendment must include:

- (1) the name of the development corporation;
- (2) if the amendment alters a provision of the original or amended articles of incorporation, an identification by reference or

description of the altered provision and a statement of its text as amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each added provision;

(4) the name and current address of the sponsoring entity;

(5) a statement that the amendment was authorized by the governing body of the sponsoring entity; and

(6) the date of the meeting at which the governing body adopted or approved the amendment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.017. CERTIFICATE OF AMENDMENT. (a) The original and two copies of the articles of amendment and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of amendment comply with this chapter and are authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of amendment and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of amendment with a copy of the articles of amendment attached to each.

(c) The secretary of state shall deliver to the development corporation or its representative and to the sponsoring entity's governing body a certificate of amendment with a copy of the articles of amendment attached.

(d) The amendment to the articles of incorporation takes effect on issuance of the certificate of amendment.

(e) An amendment does not affect an existing cause of action in favor of or against the development corporation, a pending suit to which the corporation is a party, or an existing right of any person. Change of the corporate name by amendment does not abate a suit brought by or against the corporation under its former name.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.018. RESTATED ARTICLES OF INCORPORATION. (a) A development corporation may authorize, execute, and file restated articles of incorporation by following the procedure to amend articles of incorporation, including obtaining authorization from the sponsoring entity's governing body.

(b) The restated articles of incorporation must restate the entire text of the articles of incorporation as amended or supplemented by all previous certificates of amendment. The restated articles of incorporation may also contain further amendments to the articles of incorporation.

(c) Unless the restated articles of incorporation include amendments that were not previously in the articles of incorporation and previous certificates of amendment, the introductory paragraph of the restated articles of amendment must contain a statement that the instrument accurately copies the articles of incorporation and all amendments that are in effect on the date of the filing without further changes, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted.

(d) If the restated articles of incorporation contain further amendments not included in the articles of incorporation and previous certificates of amendment, the instrument containing the restated articles of incorporation must:

(1) include for each further amendment a statement that the amendment has been made in conformity with this chapter;

(2) include the statements required by this chapter to be contained in articles of amendment, except that the full text of the amendment need not be included except in the restated articles of incorporation as amended;

(3) contain a statement that the instrument accurately copies the articles of incorporation and all previous amendments in effect on the date of the filing, as further amended by the restated articles of incorporation, and that the instrument does not contain any other change, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information



concerning the initial board of directors, and the incorporators' names and addresses may be omitted; and

(4) restate the entire text of the articles of incorporation as amended and supplemented by all previous certificates of amendment and as further amended by the restated articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.019. RESTATED CERTIFICATE OF INCORPORATION. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the restated articles of incorporation comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the restated articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two restated certificates of incorporation with a copy of the restated articles of incorporation attached to each.

(c) The secretary of state shall deliver a restated certificate of incorporation, with a copy of the restated articles of incorporation attached, to the development corporation or its representative and to the sponsoring entity's governing body.

(d) On issuance by the secretary of state of the restated certificate of incorporation, the original articles of incorporation and all amendments are superseded and the restated articles of incorporation become the development corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.020. REGISTERED OFFICE AND AGENT. (a) A development corporation shall continuously maintain a registered office and

registered agent in this state.

(b) The registered office may be, but need not be, the same as the development corporation's principal office. The registered agent may be:

(1) an individual resident of this state whose business office is the same as the registered office; or

(2) a domestic or foreign profit or nonprofit corporation that is authorized to transact business or conduct affairs in this state and that has a principal or business office that is the same as the registered office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.021. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A development corporation may change its registered office, registered agent, or both, by filing the original and a copy of a statement in the office of the secretary of state. The president or vice-president of the corporation shall execute and verify the statement.

(b) The statement must include:

(1) the development corporation's name;

(2) the post office address of the corporation's current registered office;

(3) if the registered office is to be changed, the post office address of the corporation's new registered office;

(4) the name of the corporation's registered agent;

(5) if the registered agent is to be changed, the name of the successor registered agent;

(6) a statement that, after the change, the post office address of the registered office will be the same as the post office address of the business office of the registered agent; and

(7) a statement that the change was authorized by the board of directors or by a corporate officer authorized by the board of directors to make the change.

(c) If the secretary of state finds that the statement complies with this chapter, the secretary of state, when all fees have been paid as required by this chapter, shall:

(1) write "filed" on the original and each copy of the statement and the month, day, and year of the filing;

(2) file the original statement in the office of the

secretary of state; and

(3) return the copy of the statement to the corporation or its representative.

(d) The change made by the statement takes effect on the filing of the statement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.022. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a development corporation may resign by:

(1) mailing or delivering written notice to the corporation; and

(2) filing the original and two copies of the notice in the office of the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice must include the development corporation's last known address, a statement that written notice was given to the corporation, and the date the written notice was given to the corporation.

(c) If the secretary of state finds that the notice complies with this chapter, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original notice and both copies and the month, day, and year of the filing;

(2) file the original notice in the office of the secretary of state;

(3) return one copy of the notice to the resigning registered agent; and

(4) deliver one copy of the notice to the development corporation at the address shown in the notice.

(d) The resignation takes effect on the 31st day after the date the notice is received by the secretary of state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.023. AGENTS FOR SERVICE. (a) The president, each vice-president, and the registered agent of a development corporation are the corporation's agents on whom may be served a process, notice, or demand required or permitted by law to be served on the

corporation.

(b) If a development corporation fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand may be served.

(c) The secretary of state may be served by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward one copy of the process, notice, or demand by registered mail to the development corporation at its registered office.

(d) Service on the secretary of state is returnable not earlier than the 30th day after the date of the service.

(e) The secretary of state shall keep a record of each process, notice, and demand served, including the time of the service and the action of the secretary of state in reference to the process, notice, or demand.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 41 (H.B. 297), Sec. 2, eff. September 1, 2005.

Sec. 221.024. BOARD. (a) A development corporation's affairs are governed by a board of directors composed of at least three individuals appointed by the sponsoring entity's governing body. Directors may be divided into classes.

(b) A director serves for a term of not more than six years. The terms of directors of different classes may be of different lengths.

(c) A director holds office for the term to which the director is appointed and until a successor is appointed and has qualified.

(d) The sponsoring entity's governing body may remove a director for cause or at any time without cause.

(e) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.025. OFFICERS. (a) The officers of a development corporation are:

- (1) the president, vice-president, and secretary; and
- (2) other officers, including a treasurer, and assistant officers considered necessary.

(b) An officer is elected or appointed at the time, in the manner, and for the term provided by the articles of incorporation or bylaws, except that an officer's term may not exceed three years. If the articles of incorporation or bylaws do not contain those requirements, the board of directors shall elect or appoint each officer annually.

(c) A person may simultaneously hold more than one office, except that the same person may not simultaneously hold the offices of president and secretary.

(d) An officer may be removed by the persons authorized to elect or appoint that officer if those persons believe the best interests of the corporation will be served by the removal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.026. INDEMNIFICATION. (a) Except as provided by Subsection (c), a development corporation may indemnify a director or officer or a former director or officer for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with a claim asserted against the person, by action in court or other forum, because of the person's being or having been a director or officer.

(b) If a development corporation has not fully indemnified a director or officer under Subsection (a), the court in a proceeding in which a claim is asserted against the director or officer, or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity, may assess indemnity against the corporation or its receiver or trustee. The assessment must equal:

- (1) the amount that the director or officer paid to satisfy the judgment or compromise the claim, not including any amount paid the corporation; and

(2) to the extent the court considers reasonable and equitable, the expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with the claim.

(c) A development corporation may not provide indemnity in a matter if the director or officer is guilty of negligence or misconduct in relation to the matter. A court may not assess indemnity unless it finds that the director or officer was not guilty of negligence or misconduct in relation to the matter in which indemnity is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.027. BYLAWS. (a) The board of directors shall adopt a development corporation's initial bylaws and may amend or repeal the bylaws or adopt new bylaws. The bylaws and each amendment and repeal of the bylaws must be approved by the sponsoring entity's governing body by resolution.

(b) The bylaws may contain any provision for the regulation and management of the development corporation's affairs consistent with law and the articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.028. COMMITTEES. (a) If permitted by the articles of incorporation or bylaws, the board of directors, by resolution adopted by a majority of directors in office, may designate one or more committees consisting of two or more directors to exercise the board's authority in the management of the development corporation to the extent provided by the resolution, articles of incorporation, or bylaws. The designation of a committee or delegation of authority to a committee does not relieve the board of directors or an individual director of a responsibility imposed by law.

(b) Other committees not exercising the authority of the board of directors in the management of the development corporation may be designated. Those committees may be, but need not be, limited to directors, and shall be designated and appointed by:

(1) the board of directors by resolution of a majority of directors adopted at a meeting at which a quorum is present; or

(2) the president, if authorized by the articles of incorporation, bylaws, or a resolution of a majority of the board of directors adopted at a meeting at which a quorum is present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.029. MEETINGS; ACTION WITHOUT MEETING. (a) A regular board of directors meeting may be called and held, with or without notice, as provided by the bylaws. A special board of directors meeting may be held on notice as provided by the bylaws. A regular or special meeting may be held at any location in the state.

(b) Notice or waiver of notice of a regular or special board of directors meeting need not specify the business to be transacted or the meeting's purpose, unless required by the bylaws.

(c) A director's attendance at a meeting waives notice to the director of the meeting, unless the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(d) A quorum is the lesser of:

(1) a majority of the number of directors established by the bylaws, or if the bylaws do not establish a number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) the number of directors, which number may not be smaller than three, established as a quorum by the articles of incorporation or bylaws.

(e) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the articles of incorporation or bylaws. The articles of incorporation control if, with respect to an action to be taken by the board of directors, the articles of incorporation require the vote or concurrence of a greater proportion of directors than required by this chapter with respect to the action.

(f) An action required or permitted to be taken at a board of directors meeting may be taken without a meeting if a consent is signed by all directors. An action permitted to be taken at a committee meeting may be taken without a meeting if a consent is signed by all members of the committee. A consent under this

subsection must be in writing and must set forth the action to be taken. The consent has the effect of a unanimous vote and may be stated as a unanimous vote in articles or other documents filed with the secretary of state under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.030. CORPORATION'S GENERAL POWERS. (a) Subject to Section 221.035, a development corporation has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire, by purchase, devise, gift, lease, or a combination of those methods, construct, or improve, or cause a user to acquire, construct, or improve, one or more health facilities located in the state and located:

(A) wholly or partly within the limits of the sponsoring entity; or

(B) outside the limits of the sponsoring entity, with the consent of each other sponsoring entity in which the health facility is or is to be located;

(2) lease as lessor all or part of a health facility for the rental amount and on the terms and conditions that the corporation considers advisable;

(3) sell for installment payments or other method of payment, option or contract for sale, and convey all or part of a health facility for the price and on the terms and conditions that the corporation considers advisable;

(4) make a contract, incur a liability, borrow money at a rate of interest the corporation determines, and secure bonds or obligations by mortgage or pledge of all or part of the corporation's property, franchises, and income;

(5) make a secured or unsecured loan to provide temporary or permanent financing or refinancing of all or part of the cost of a health facility, including refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a health facility;

(6) charge and collect interest on a loan for the loan payments and on the terms that the board of directors considers advisable;



(7) lend money for its corporate purposes, invest and reinvest corporate funds, and take and hold property as security for the payment of the money loaned or invested;

(8) purchase, receive, lease, or acquire in another manner, own, hold, improve, or use property or an interest in property, or deal in any other manner in or with that property, regardless of location, as the purposes of the corporation require or, if the property is donated, subject to the terms of the donation;

(9) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of the corporation's property and assets;

(10) appoint agents of the corporation for the period the corporation determines, and determine their duties;

(11) sue, be sued, complain, and defend in its corporate name; and

(12) have a corporate seal, which the corporation may alter as it considers necessary, and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers.

(b) A development corporation may not incur a financial obligation under this chapter unless it is payable solely from:

(1) bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a corporation to finance or refinance a health facility in whole or part;

(3) revenue derived from operating a health facility; or

(4) other revenue provided by a user of a health facility.

(c) A sponsoring entity may not delegate to a development corporation the power of taxation or eminent domain, police power, or an equivalent sovereign power of the state or the sponsoring entity.

(d) This section does not authorize a corporate director or officer to exercise a power enumerated by this section in a manner inconsistent with the development corporation's articles of incorporation or bylaws or beyond the scope of the corporation's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.031. CONVEYANCE OF LAND. (a) A development corporation may convey land by deed if the conveyance is authorized by an appropriate resolution of the board of directors. The deed may be with or without the corporation's seal and must be signed by the corporation's president, vice-president, or attorney.

(b) If the deed is acknowledged by the signing officer or attorney to be the act of the development corporation, or if the deed is proved in the manner prescribed for other conveyances of land, it may be recorded in the same manner and with the same effect as other deeds.

(c) A deed that is signed by the development corporation's president or vice-president and recorded is prima facie evidence that the board of directors adopted the appropriate resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.032. PERFECTION OF SECURITY INTEREST. A security interest granted by a corporation may be perfected in the manner and with the effect provided by Chapter 9, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.32, eff. July 1, 2001.

Sec. 221.033. TAXATION. (a) A health facility, including a leasehold estate in a health facility, that is owned by a development corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall be assessed to the user of the health facility to the same extent and subject to the same exemptions from taxation as if the user owned the health facility. If there is more than one user of the health facility, the health facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or employ the health facility.

(b) The user of a health facility is considered the owner of the health facility for purposes of the application of:

(1) sales and use taxes in construction, sale, lease, or rental of the health facility; and

(2) other taxes levied or imposed by the state or a political subdivision of the state.

(c) A development corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by the state, a municipality, or other political subdivision of the state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by the state, a municipality, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.034. NET EARNINGS. A development corporation is a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses of accomplishing its public purpose may benefit a person other than the sponsoring entity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.035. ALTERATION OF DEVELOPMENT CORPORATION OR ACTIVITIES. The sponsoring entity, in its sole discretion, may alter the development corporation's structure, organization, programs, or activities, subject only to limitations provided by law relating to the impairment of contracts entered into by the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.036. EXAMINATION OF BOOKS AND RECORDS. A representative of the sponsoring entity may examine all books and records of the development corporation at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.037. WAIVER OF NOTICE. If a notice is required to be given to a director by this chapter, the articles of incorporation, or bylaws, a waiver of the notice signed by the person entitled to the notice, before or after the time that would have been stated in the notice, is equivalent to giving the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### SUBCHAPTER C. BONDS

Sec. 221.061. AUTHORITY TO ISSUE; USE OF PROCEEDS. (a) A development corporation may issue bonds to pay all or part of the cost of a health facility or for cash management.

(b) Before preparation and issuance of definitive bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, that may be exchanged for definitive bonds after the definitive bonds are executed and available for delivery. The term of the interim receipts or temporary bonds may not exceed three years.

(c) Bond proceeds may be used only for payment of all or part of the cost of a health facility for which the bonds have been issued, for making a loan in the amount of all or part of the cost of that health facility, or for deposit to a reserve fund for the bonds. The proceeds shall be disbursed in the manner and under the restrictions determined by the development corporation.

(d) From the bond proceeds, the development corporation shall be paid an amount equal to:

(1) the corporation's expenses and costs in issuing, selling, and delivering the bonds, including financing, legal, financial advisory, and printing expenses; and

(2) the compensation paid to employees of the corporation for the time the employees spend on activities relating to issuing, selling, and delivering the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.062. INFORMATION FILED WITH SPONSORING ENTITY. (a) Not later than the 15th day before the date on which bonds are issued, the proceeds of which are to be used to pay all or part of the cost of a health facility, the development corporation shall file with the sponsoring entity's governing body a full and complete description of the health facility, including:

(1) an explanation of the projected costs and of the necessity for the proposed health facility; and

(2) the name of the proposed user of the health facility.

(b) If the bond proceeds are to be used for cash management, the user shall file with the sponsoring entity's governing body a forecast of the user's need for cash based on the user's most recent revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month for a period of not more than one year.

(c) After issuing the bonds and before using all of the bond proceeds, the development corporation may amend the filing required by this section and use the proceeds as provided by the amended filing if the sponsoring entity's governing body determines that the use according to the amended filing furthers the purposes of this chapter.

(d) Information filed under this section is public information open to public inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.063. TERMS. (a) Bonds issued under this chapter must be dated and bear interest at a fixed or variable rate determined by the development corporation. The bonds must mature at the time determined by the corporation, but may not mature later than 40 years after their date of issuance. Bonds issued for cash management may not mature later than 24 months after their date of issuance.

(b) The bonds may be made redeemable before maturity at the price and on the terms determined by the development corporation.

(c) The bonds, including any interest coupons initially attached, must be in the form and denomination, payable at the place, and executed or authenticated in the manner that the development corporation determines.

(d) The bonds may be issued in coupon or registered form or be payable to a specific person, as the development corporation determines. The corporation may provide for the registration of coupon bonds as to principal only, for the conversion of coupon bonds into fully registered bonds without coupons, and for reconversion into coupon bonds of fully registered bonds without coupons. The duty of conversion or reconversion may be imposed on a trustee in a trust agreement.

(e) The signature or facsimile of the signature of an officer that appears on the bonds or coupons remains valid and sufficient for

all purposes regardless of whether the person ceases to be an officer before delivery of and payment for the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.064. SALE. (a) A development corporation shall sell at a public or private sale the bonds at the price it determines.

(b) The net effective interest rate on the bonds, computed according to Chapter 1204, Government Code, may not exceed the maximum annual interest rate established for business loans of \$250,000 or more in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.249, eff. Sept. 1, 2001.

Sec. 221.065. REFUNDING BONDS. (a) A development corporation may issue bonds to refund any of its valid outstanding bonds, including any bonds issued for unspecified projects and including any redemption premium on the bonds and interest accrued to the date of redemption, on a finding by the board of directors of the development corporation that there is a public benefit and a public purpose for the refunding.

(b) The provisions of this chapter generally applicable to bonds apply to the issuance, maturity, terms, and holder's rights in the refunding bonds, and to the development corporation's rights, duties, and obligations in relation to the refunding bonds.

(c) The development corporation may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 829, Sec. 2, eff. June 19, 1993.

Sec. 221.066. SOURCE OF PAYMENT; BONDS NOT GENERAL OBLIGATION.

(a) The principal of, interest on, and any redemption penalty on bonds issued under this chapter are payable solely from, and may be secured by a pledge of all or part of, one or more of the following:

- (1) the bond proceeds;
- (2) revenue derived from the lease or sale of a health facility or from a loan made by a development corporation to finance or refinance all or part of a health facility;
- (3) revenue derived from the operation of a health facility; or
- (4) other revenue provided by a user of a health facility.

(b) The bonds are not an obligation or a pledge of the faith and credit of the state, a sponsoring entity, or other political subdivision or agency of the state.

(c) Each bond must contain on its face a statement that:

(1) neither the state nor a political subdivision or agency of the state, including the sponsoring entity, is obligated to pay the bonds or interest on the bonds; and

(2) neither the faith and credit nor the taxing power of the state, the sponsoring entity, or other political subdivision or agency of the state is pledged to the payment of the principal of or interest or any redemption premium on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.067. EXEMPT SECURITIES. (a) Bonds issued under this chapter and any interest coupons are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) If the bonds are secured by an agreement by a user to pay to the development corporation amounts sufficient to pay the principal of and interest and any redemption premium on the bonds, the agreement, for the purposes of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), is a separate security issued to purchasers of the bonds by the user, and not by the corporation. The agreement is exempt from that Act only if:

- (1) that Act exempts the agreement; or
- (2) the bonds or the payments to be made under the agreement are guaranteed by any person and the guarantee is an exempt security under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.068. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Unless made ineligible under other law, rules, or rulings, bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary, trustee, or guardian; and
- (7) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposit of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons, if any.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. DISSOLUTION OF CORPORATION**

Sec. 221.081. DISSOLUTION AUTHORIZED. After a development corporation's bonds and other obligations are paid and discharged, or adequate provision is made for their payment and discharge, the sponsoring entity's governing body by written resolution shall authorize and direct the dissolution of the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.082. ARTICLES OF DISSOLUTION. (a) Articles of dissolution on behalf of the corporation shall be executed by:

- (1) the president or vice-president and the secretary or assistant secretary; or
- (2) the presiding officer of the sponsoring entity's governing body and the secretary or clerk of that body.

(b) An officer signing the articles of dissolution shall verify them.

(c) The articles of dissolution must include:

- (1) the name of the development corporation;
- (2) the name and address of the sponsoring entity;



(3) a statement that the dissolution was authorized by the governing body of the sponsoring entity;

(4) the date of the meeting at which the dissolution was authorized;

(5) a statement that all of the corporation's bonds and obligations have been paid and discharged or that adequate provision has been made for their payment and discharge; and

(6) a statement that no suit is pending in a court against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in each pending suit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.083. CERTIFICATE OF DISSOLUTION. (a) The original and two copies of the articles of dissolution shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of dissolution comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of dissolution and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of dissolution with a copy of the articles of dissolution attached to each.

(c) The secretary of state shall deliver a certificate of dissolution with a copy of the articles of dissolution attached to the representative of the dissolved development corporation and to the sponsoring entity's governing body.

(d) The existence of the development corporation ceases on issuance of the certificates of dissolution, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of the corporation as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.084. EXTENSION OF DURATION. If a corporation is dissolved by expiration of its duration, the corporation may amend its articles of incorporation to extend its duration within three years after the date of dissolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.085. VESTING PROPERTY IN SPONSORING ENTITY. The title to all funds and other property owned by a development corporation when it dissolves automatically vests in the sponsoring entity without further conveyance, transfer, or other act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.086. RIGHTS, CLAIMS, AND LIABILITIES BEFORE DISSOLUTION. The dissolution of a development corporation by issuance of a certificate of dissolution or expiration of its duration does not impair a remedy available to or against the corporation or a director or officer of the corporation for a right or claim existing or a liability incurred before the dissolution, if action or other proceeding on the remedy is begun within three years after the date of the dissolution. The action may be prosecuted or defended by the corporation in its corporate name. The directors and officers may take corporate or other action as appropriate to protect the remedy, right, or claim.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE**

Sec. 221.101. ADMINISTRATION OF CHAPTER. The secretary of state may act as reasonably necessary to efficiently administer this chapter and to perform the duties imposed by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.102. FEES. (a) The secretary of state shall charge and collect fees for:

- (1) filing articles of incorporation and issuing two certificates of incorporation;
- (2) filing articles of amendment and issuing two certificates of amendment;
- (3) filing a statement of change of address of registered office or change of registered agent, or both;
- (4) filing restated articles of incorporation and issuing two restated articles of incorporation; and
- (5) filing articles of dissolution.

(b) The fees are in the amounts charged by the secretary of state for the respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.103. NOTICE AND APPEAL OF DISAPPROVAL. (a) If the secretary of state fails to approve a document required by this chapter to be approved by the secretary of state, the secretary of state, not later than the 10th day after the date the document is delivered to the secretary of state, shall give written notice of the disapproval to the person who delivered the document. The notice must state the reasons for the disapproval.

(b) The person may appeal the disapproval to a district court of Travis County by filing with the clerk of the court a petition including a copy of the disapproved document and a copy of the disapproval notice.

(c) The court shall try the matter de novo, and either sustain the secretary of state's action or direct the secretary of state to take action the court considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.104. DOCUMENTS AS PRIMA FACIE EVIDENCE. The following documents shall be received by a court, public office, or official body as prima facie evidence of the facts, or the existence or nonexistence of the facts, stated in the document:

- (1) a certificate issued by the secretary of state under this chapter;

(2) a copy, certified by the secretary of state, of a document filed in the office of the secretary of state under this chapter; and

(3) a certificate of the secretary of state under the state seal as to the existence or nonexistence of a fact relating to a development corporation that would not appear from a document or certificate under Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 33, eff. Aug. 30, 1993.

**CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION, INSPECTION,  
AND REGULATION**

**SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS**

Sec. 222.001. SHORT TITLE. This subchapter may be cited as the Texas Hospital Survey and Construction Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.002. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Department" means the Texas Department of Health.

(4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.

(5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.003. EXCEPTION. This subchapter does not apply to a hospital furnishing primarily domiciliary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND CONSTRUCTION.

(a) The division of hospital survey and construction is a division of the department.

(b) The division is administered by a full-time salaried director appointed by the commissioner and under the supervision and direction of the board.

(c) The commissioner shall appoint other personnel of the division.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS.

(a) The department, through the division of hospital survey and construction, is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The board may establish methods of administration and adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers.

(c) The commissioner shall:

(1) require reports, make inspections and investigations, and prescribe rules as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.006. FUNDING. (a) The commissioner shall accept, on behalf of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The commissioner shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The commissioner shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The commissioner shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES. To the extent the commissioner considers desirable to carry out the purposes of this subchapter, the commissioner may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.008. EXPERTS AND CONSULTANTS. The commissioner may contract for services of experts or consultants, or organizations of experts or consultants, on a part-time or fee-for-service basis. The contracts may not involve the performance of administrative duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.009. COMMISSIONER'S REPORT. (a) The commissioner annually shall report to the board on activities and expenditures under this subchapter.

(b) The commissioner shall include in the report recommendations for additional legislation that the commissioner considers appropriate to furnish adequate hospital, clinic, and similar facilities to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES**

Sec. 222.021. PURPOSE. The purpose of this subchapter is to require that state agencies that perform inspections of health care facilities, including the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and other agencies with which each of those agencies contracts, do not duplicate their procedures or subject health care facilities to duplicative rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.022. DEFINITIONS. In this subchapter:

(1) "Health care facility" has the meaning assigned by Section 104.002, except that the term does not include a treatment facility licensed by the Texas Commission on Alcohol and Drug Abuse.

(2) "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.

(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF

INSPECTION. (a) Except as provided by Subsection (c), a hospital licensed by the Texas Department of Health is not subject to additional annual licensing inspections before the department issues the hospital a license while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) If the department licenses a hospital exempt from an annual licensing inspection under Subsection (a), the department shall issue a renewal license to the hospital if the hospital annually:

(1) submits a complete application required by the department;

(2) remits any applicable fees;

(3) submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and

(4) submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(c) The department may conduct an inspection of a hospital exempt from an annual licensing inspection under Subsection (a) before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 223, Sec. 1, eff. Sept. 1, 1997.

Sec. 222.025. LIMITATION OF OTHER REGULATION. (a) The Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation each by rule shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of functions in



certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of Chapter 32, Human Resources Code, and federal law and regulations relating to Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.). The procedures must provide for use by each agency of information collected by the agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facility under their jurisdiction.

(b) The Texas Department of Health shall coordinate all licensing or certification procedures conducted by the state agencies covered by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 222.0255. NURSING HOMES. (a) The Texas Department of Human Services shall develop one set of standards for nursing homes that apply to licensing and to certification for participation in the medical assistance program under Chapter 32, Human Resources Code.

(b) The standards must comply with federal regulations. If the federal regulations at the time of adoption are less stringent than the state standards, the department shall keep and comply with the state standards.

(c) The department by rule shall adopt the standards and any amendments to the standards.

(d) The department shall maintain a set of standards for nursing homes that are licensed only.

(e) Chapter 242 establishes the minimum licensing standards for an institution. The licensing standards adopted by the department under this chapter shall be adopted subject to Section 242.037(b) and must comply with Section 242.037(c) and the other provisions of Chapter 242.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 64, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.079, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.32, eff. Sept. 1, 1997.

Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT

AUTHORITY. (a) Sections 222.024, 222.025, and 222.0255 do not affect the authority of the Texas Department of Health to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the department that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; provided, however, that the department shall coordinate with the federal Health Care Financing Administration and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations.

(b) The department shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 64, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 17, eff. Sept. 1, 1993.

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 63, eff. Sept. 1, 1991.

**SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR MENTALLY  
RETARDED**

Sec. 222.041. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Board of Human Services.
- (2) "Commissioner" means the commissioner of human services.
- (3) "Department" means the Texas Department of Human Services.
- (4) "ICF-MR" means the medical assistance program serving persons receiving care in intermediate care facilities for mentally retarded persons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.080, eff. Sept. 1, 1995.

Sec. 222.042. LICENSING OF ICF-MR BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new ICF-MR beds or the expansion of an existing ICF-MR facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 1, eff. Aug. 30, 1993;  
Acts 1993, 73rd Leg., ch. 747, Sec. 26, eff. Sept. 1, 1993.

Sec. 222.043. REVIEW OF ICF-MR SURVEYS. (a) The board by rule shall establish policies and procedures as prescribed by this section to conduct an informal review of ICF-MR surveys when the survey findings are disputed by the provider. The board shall provide that the procedure may be used only if the deficiencies cited in the survey report do not pose an imminent threat of danger to the health or safety of a resident.

(b) The department shall designate at least one employee to conduct on a full-time basis the review provided by this section. The person must be impartial and may not be directly involved in or supervise any initial or recertification surveys. The person may participate in or direct follow-up surveys for quality assurance

purposes only at the discretion of the commissioner or the commissioner's designated representative or under Chapter 242.

(c) The employee designated under Subsection (b) should have current knowledge of applicable federal laws and survey processes. The employee reports directly to the commissioner or the commissioner's designated representative.

(d) If a provider disputes the findings of a survey team or files a complaint relating to the conduct of the survey, the employee designated under Subsection (b) shall conduct an informal review as soon as possible, but before the 45th day after the date of receiving the request for a review or the expiration of the period during which the provider is required to correct the alleged deficiency, whichever is sooner.

(e) The employee conducting the review shall sustain, alter, or reverse the original findings of the survey team after consulting with the commissioner or the commissioner's designated representative.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.081, eff. Sept. 1, 1995.

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall conduct follow-up surveys of ICF-MR facilities to:

- (1) evaluate and monitor the findings of the certification or licensing survey teams; and
- (2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the department. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.082, eff. Sept. 1, 1995.

Sec. 222.046. SURVEYS OF ICF-MR FACILITIES. (a) The

department shall ensure that each survey team sent to survey an ICF-MR facility includes a qualified mental retardation professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an ICF-MR facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.

## **CHAPTER 223. HOSPITAL PROJECT FINANCING ACT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 223.001. SHORT TITLE. This chapter may be cited as the Hospital Project Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.002. DEFINITIONS. In this chapter:

(1) "Authority" means a public health authority, including a hospital authority created under Chapter 262 or 264.

(2) "Bond" includes a note.

(3) "Issuer" means an authority, municipality, county, or hospital district.

(4) "Hospital project" means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

(5) "Nonprofit organization" means:

(A) a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) an association, foundation, trust, cooperative, or similar person no part of the net earnings of which is distributable to any private shareholder or individual and that incurs a contractual obligation with an issuer with respect to a hospital project under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.003. HOSPITAL PROJECT COSTS. (a) Hospital project costs include costs related to:

(1) the acquisition of land, a right-of-way, an option to purchase land, an easement, or another interest in land related to a hospital project;

(2) the acquisition, construction, repair, renovation, remodeling, or improvement of a structure to be used as or with a hospital project;

(3) site preparation, including demolishing or removing a structure the removal of which is necessary or incident to providing a hospital project;

(4) expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project, including architectural, engineering, legal, and related services, plans and specifications, studios, surveys, and cost and revenue estimates;

(5) machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project for operation;

(6) financing charges and interest accruing before and during construction, and after completion of construction for not more than two years;

(7) the start-up of a hospital project during construction and after completion of construction for not more than two years;

(8) hospital project financing, including:

(A) legal, accounting, and appraisal fees, expenses, and disbursements;

(B) printing, engraving, and reproduction services;  
and

(C) an initial or acceptance fee of a trustee or paying agent;

(9) the provision of the hospital project by the issuer, including:

(A) costs incurred directly or indirectly by the issuer;

(B) reimbursement of reasonable sums to the issuer for time spent by its employees in providing the hospital project and its financing; and

(C) the appraisal obtained under Section 223.011(d)(2);  
and

(10) the authorization, preparation, sale, issuance, and delivery of bonds under this chapter, including:

(A) related fees, charges, and expenses;

(B) expenses and costs described by Section 223.029(b);  
and

(C) expenses incurred in carrying out a trust agreement relating to hospital project bonds.

(b) The listing of items of cost in Subsection (a) is not inclusive of all hospital costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. FINANCING HOSPITAL PROJECTS**

Sec. 223.011. PROVIDING HOSPITAL PROJECTS. (a) An issuer acting for itself or through a nonprofit organization may provide one or more hospital projects by acquisition, construction, or improvement. An acquisition may occur by purchase, devise, gift, lease, or a combination of those methods.

(b) A hospital project must be located in this state and within or partially within the issuer's boundaries, except that a hospital project of a municipality may be located:

(1) outside the municipality's limits if it is within the municipality's extraterritorial jurisdiction; or

(2) in another municipality if the governing body of the other municipality consents to the former municipality's provision of the project.

(c) An issuer may only acquire a hospital project from a nonprofit organization that has been in existence and has operated the hospital project for at least three years before the date of acquisition by the issuer.

(d) An issuer must affirmatively find that the cost of an acquired hospital project is not more than:

(1) the actual audited cost of the hospital project to the date of acquisition; or

(2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.012. TITLE TO PROJECTS. (a) An issuer may vest title to a hospital project provided under this chapter in a nonprofit organization.

(b) If the issuer vests the title in a nonprofit organization,



it may retain a mortgage interest in the hospital project. The mortgage interest expires when all bonds of the issuer sold to provide the hospital project are paid or provision has been made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT. (a) An issuer may execute a contract, including a lease, with a nonprofit organization with respect to a hospital project. A contract may authorize the nonprofit organization to use, operate, or acquire the hospital project on the terms, including payment provisions, the issuer's governing body determines to be advisable.

(b) A contract may include the sale of a hospital project to a nonprofit organization, including a nonprofit organization using the hospital project. The terms of the sale may include installment payments. The sale must be fully consummated when all bonds of the issuer issued to provide the hospital project are paid or provision is made for their final payment if, during the time the bonds or interest on the bonds remains unpaid, there is no failure to make any payments owing under any lease or contract at the time and in the manner as the payments come due.

(c) A contract under this chapter may be for the term agreed to by the parties and may provide that the contract continues until the bonds specified in the contract, or refunding or substitution bonds issued in place of those bonds, are fully paid or provision is made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.014. AUTHORITY OF ISSUER. An issuer has full and complete authority relating to its bonds, a lease agreement in which the issuer is a lessor, or a sale or other contract, subject only to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.015. OBLIGATIONS LIMITED. (a) The issuer may not

incur a financial obligation under this chapter that cannot be paid from the proceeds of hospital project bonds, revenues derived from operating a hospital project, or other revenues that may be provided by a nonprofit organization in accordance with this chapter.

(b) The legislature or an issuer may not make an appropriation to pay any part of a cost of a hospital project or any operating cost of a hospital project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.016. EMINENT DOMAIN. (a) Under this chapter, an issuer may not acquire by eminent domain a hospital project, or any part of a hospital project, to be sold or leased under this chapter.

(b) Land previously acquired by eminent domain by an issuer may be sold or leased under this chapter if the governing body of the issuer determines that:

(1) the use of the land will not interfere with the purpose for which the land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the date the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes or, if the land was acquired for park purposes, the sale or lease of parkland has been approved at an election held under Section 1502.055, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.250, eff. Sept. 1, 2001.

#### **SUBCHAPTER C. HOSPITAL PROJECT BONDS**

Sec. 223.021. ISSUANCE OF HOSPITAL PROJECT BONDS. (a) An issuer may provide for the issuance of negotiable revenue bonds or other evidences of indebtedness for paying hospital project costs. The bonds may be issued subject only to the requirements of this chapter.

(b) As the governing body of the issuer determines to be in the best interest of the issuer, one or more series of bonds may be issued for each hospital project, or more than one hospital project may be combined in one or more series of bonds, but each hospital

project may be considered separately with respect to Subsections (c), (d), and (e), and Sections 223.022-223.024.

(c) Before issuing bonds, the governing body of an issuer must adopt a resolution:

(1) declaring its intention to issue bonds; and

(2) stating the maximum amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of the bonds.

(d) Unless the governing body of the issuer orders an election on the issuance of the bonds, a substantial copy of the resolution shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first publication must be made not earlier than the 45th day before the tentative date stated in the resolution. The third publication must be made not later than the 11th day before the tentative date.

(e) Before authorizing the issuance of any bonds or ordering an election on any matters authorized by this chapter, the issuer must deposit with the chief administrative officer of the issuer a complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the name of each owner of the nonprofit organization for whom the hospital project is to be constructed. The required description is public information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.022. ELECTION ON BONDS. (a) The governing body of an issuer shall order and hold an election on the question of the issuance of hospital project bonds if at least five percent or 20,000 of the voters qualified to vote in an election held by the issuer, whichever is less, file a written protest against the issuance of the bonds before the close of business on the business day before the tentative date in the resolution for the authorization of the bonds.

(b) The issuer's governing body may order an election on its own motion without the filing of a protest.

(c) In addition to the contents required by the Election Code, the election order must specify the location of and the presiding judge and alternate judge for each polling place.

(d) Notice of a bond election shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first notice must be published not earlier than the 45th day before the date set for the election, and the third notice must be published not later than the 11th day before the date set for the election.

(e) The election shall be conducted in accordance with the general laws pertaining to bond elections in municipalities, except as modified by this chapter.

(f) The ballot shall provide for voting for or against the proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects."

(g) The governing body shall declare whether a majority of the voters voting in the election approve the proposition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.023. ELECTION RESULTS. (a) If the proposition is approved by a majority of the voters voting in the election, the issuer may authorize the bonds.

(b) If the proposition is not approved, an election on the issuing of revenue bonds for the hospital project that was the subject of the election may not be ordered within six months after that election, and bonds may not be issued for the hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.024. PROTEST NOT FILED. If a protest requiring an election is not filed under Section 223.022(a) and an election is not called under Section 223.022(b), the issuer may issue the bonds under the resolution without an election for two years after the tentative date specified in the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.025. LIMITATIONS ON BONDS. (a) Bonds issued in accordance with this chapter are not general obligations or a pledge of the faith and credit of this state, the issuer, or another political subdivision of this state. The bonds are payable solely from revenues of the hospital project for which they are issued or from other revenues provided by a nonprofit organization. Money of this state or a political subdivision of this state from any source, including tax revenue, but excluding revenue of the hospital project being financed with the bonds, may not be used to pay the principal of, any redemption premium for, or interest on revenue bonds or refunding bonds issued under this chapter.

(b) Each revenue bond must state on its face that:

(1) this state, the issuer, or any political subdivision of this state is not obligated to pay the principal of, any redemption premium for, or interest on the bonds except from the revenues pledged for that purpose; and

(2) the faith, credit, or the taxing power of this state, the issuer, or any political subdivision of this state is not pledged to the payment of the principal of, any redemption premium for, or interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.026. FORM AND TERM OF BONDS. (a) The issuer shall determine the form of the bonds, the date of the bond issue, the price and interest rate of the bonds, and the maturity for the bonds, which may not be more than 40 years after its date.

(b) The issuer may:

(1) make the bonds redeemable before maturity and determine the prices and conditions for early redemption;

(2) determine:

(A) the interest coupons to be attached to the bonds;

(B) the denominations of the bonds; and

(C) the places of payment of the bonds' principal, any redemption premium, and interest;

(3) issue the bonds in coupon or in registered form, or both;

(4) make the bonds payable to a specific person;

(5) provide for the registration of coupon bonds as to

principal or as to principal and interest; and

(6) provide for the conversion of coupon bonds into registered bonds without coupons and for the reconversion into coupon bonds of any registered bonds without coupons.

(c) If the duty of conversion or reconversion of a bond is imposed on a trustee in a trust agreement, the substituted bonds need not be reapproved by the attorney general, and the bonds remain incontestable.

(d) The issuer may provide for execution of the bonds and any coupons using a facsimile signature under Chapter 618, Government Code. If the signature or a facsimile signature of a person who has been an officer appears on a bond or coupon, the signature or facsimile signature is valid and sufficient for all purposes, regardless of whether the person is an officer when the bonds are delivered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.251, eff. Sept. 1, 2001.

Sec. 223.027. DEDICATED REPAYMENT REVENUE. The principal of, any redemption premium for, and interest on hospital project bonds are payable from and secured, as specified by the resolution of the governing body or in any trust agreement or other instrument securing the bonds, by a pledge of all or part of the revenues of the issuer to be derived from:

- (1) the ownership, operation, lease, use, mortgage, or sale of the hospital project for which the bonds have been issued; or
- (2) other revenues provided by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.028. SECURITY FOR BONDS. (a) Bonds issued under this chapter may be secured by a trust agreement between the issuer and a trust company or bank having the powers of a trust company in this state.

(b) A trust agreement may pledge or assign lease income, contract payments, fees, or other charges to be received from a nonprofit organization. The governing body of the issuer may secure the bonds additionally by a mortgage, a deed of trust lien, or other

security interest on a designated hospital project vesting in the trustee the power to sell the hospital project for the payment of the indebtedness, the power to operate the hospital project, and any other power for the further security of the bonds.

(c) The trust agreement may:

(1) evidence a pledge of all or any part of the revenue of the issuer from the ownership, operation, lease, use, mortgage, or sale of a hospital project for the payment of principal of, any redemption premium for, and interest on the bonds when due and payable;

(2) provide for the creation and maintenance of reserves;

(3) set forth the rights and remedies of the bondholders and of the trustee;

(4) restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations;

(5) contain provisions the issuer considers reasonable and proper for the security of the bondholders; and

(6) provide for the issuance of bonds to replace lost, stolen, or mutilated bonds.

(d) A trust agreement or resolution providing for the issuance of bonds may provide for protecting and enforcing the rights and remedies of the bondholders as reasonable and proper, including covenants setting forth the duties of the issuer and the nonprofit organization in relation to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which the bonds are issued; and

(2) the custody, safeguarding, and application of all money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.029. USE OF PROCEEDS. (a) The proceeds of the bonds may be:

(1) used only for the payment of hospital project costs for which the bonds are issued; and

(2) disbursed in the manner and subject to the restrictions provided in the resolution authorizing the issuance or in the trust

agreement securing the bonds.

(b) The issuer shall be paid, from the proceeds of its bonds, money in the amount equal to:

(1) the issuer's actual expenditures for financing, legal, printing, and other expenses incurred in issuing, selling, and delivering the bonds; and

(2) the compensation paid to the issuer's employees for the time the employees spent on activities related to the issuance, sale, and delivery of the bonds.

(c) If the amount of proceeds exceeds the cost of the hospital project for which the bonds are issued, the excess shall be deposited to the credit of the sinking fund for the bonds.

(d) The governing body of the issuer may provide for a bond reserve fund in the resolution authorizing the bonds or an instrument securing the bonds and may set aside amounts from the proceeds for payments into the reserve fund.

(e) Proceeds from the sale of bonds may be invested in:

(1) direct, indirect, or guaranteed obligations of the United States that mature in a manner specified by the resolution authorizing the bonds or another instrument securing the bonds; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(f) The issuer's governing body may designate a trust company or a bank with trust powers to act as depository for proceeds of bonds or revenues from a lease or other contract. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.030. TEMPORARY OBLIGATIONS. (a) Before the issuance of definitive bonds, the issuer may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery.

(b) The term of an interim receipt or temporary bond may not be more than two years.

(c) The issuer shall submit the interim receipts or temporary bonds to the attorney general in accordance with Section 223.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 223.031. EXAMINATION OF BONDS. (a) After issuance of the bonds is authorized and before delivery of the bonds to their purchasers, the bonds and the proceedings authorizing their issuance and securing the bonds shall be presented to the attorney general for examination.

(b) If the bonds state that they are secured by a pledge of all or part of the revenues of the issuer to be derived from a lease or other contract, the contract shall also be submitted to the attorney general.

(c) If the attorney general finds that the bonds have been authorized in accordance with state law and any contract securing the bonds has been made in accordance with state law, the attorney general shall approve the bonds and contract.

(d) The comptroller shall register the bonds when they are approved. After approval and registration, the bonds and contract submitted with the bonds are valid and binding obligations according to their terms and are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.032. REFUNDING BONDS. (a) An issuer by resolution may authorize the issuance of revenue bonds to refund:

(1) outstanding bonds or other evidences of indebtedness that have been issued to provide a hospital project; or

(2) outstanding obligations, mortgages, or advances issued, made, or given by a nonprofit organization for the cost of a hospital project.

(b) The amounts refunded may include the principal of and any redemption premium for the bonds or other evidences of indebtedness, and any interest accruing to the date of redemption.

(c) The bonds or other evidences of indebtedness to be refunded need not have been issued under this chapter and need not have been originally issued by the issuer of the refunding bonds.

(d) This subchapter governs the issuance of refunding bonds, the maturities and other details of the bonds, the rights of the bondholders, and rights, duties, and obligations of the refunding bond issuer.

(e) The issuer may issue the refunding bonds in exchange or substitution for outstanding bonds or other evidences of indebtedness or may sell the refunding bonds and use the proceeds for paying or redeeming outstanding bonds or other evidences of indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.033. ENFORCEMENT OF AGREEMENTS. (a) An agreement made under this chapter may provide, in the event of default in the payment of the principal of, interest on, or any redemption premium for bonds subject to the agreement or in the performance of an agreement contained in the proceedings, mortgage, or instruments relating to the bonds, for enforcement of the payment or performance by:

(1) mandamus; or

(2) the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with the resolution, mortgage, or instruments.

(b) A mortgage to secure hospital project bonds may provide for foreclosure and the sale of the property secured by the mortgage on default in the mortgage payment or the violation of an agreement contained in the mortgage. The foreclosure and sale may occur under proceedings in equity or in any other manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may be the purchaser at a foreclosure sale if the trustee or bondholder is the highest bidder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.034. MEMBERSHIP OF GOVERNING BODY NOT SUBJECT TO CHANGE. The resolution authorizing the issuance of hospital project bonds, the trust agreement securing the bonds, or any other agreement relating to the bonds may not prescribe the method of selecting or the term of office of any member of the issuer's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.035. BONDS TAX EXEMPT. The bonds issued under this chapter, their transfer, and interest from the bonds, including profit made from their sale, are exempt from taxation by this state and a municipality or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.036. BONDS AS SECURITIES. (a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A lease agreement, sales agreement, or other contract under this chapter is not a security under The Securities Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.037. BONDS AS INVESTMENTS. (a) Unless the bonds issued under this chapter are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States, the bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee or guardian; and
- (8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of this state.

(b) The bonds may secure the deposits of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer or nonprofit organization, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES**

Sec. 224.001. DEFINITIONS. In this chapter:

- (1) "Covered individual" means:
  - (A) an employee of the health care facility;
  - (B) an individual providing direct patient care under a contract with a health care facility; or
  - (C) an individual to whom a health care facility has granted privileges to provide direct patient care.
- (2) "Health care facility" means:
  - (A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or
  - (B) a hospital maintained or operated by this state.
- (3) "Regulatory authority" means a state agency that regulates a health care facility under this code.
- (4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED.

- (a) Each health care facility shall develop and implement a policy

to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

#### **CHAPTER 225. HEALTH PLANNING AND CAPITAL EXPENDITURE REVIEW**

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Capital expenditure" means an expenditure that is not an operation or a maintenance expense under generally accepted accounting principles.

(2) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation

facility, and any other facility designated a health care facility by federal law. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.002. FEDERAL LAW. A reference in this chapter to federal law is a reference to any pertinent federal authority, including:

- (1) the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79);
- (2) Pub. L. Nos. 79-725, 88-164, 89-749, and 92-603; and
- (3) the federal rules and regulations adopted under a law specified by Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.003. GOVERNOR'S DUTIES RELATING TO HEALTH PLANNING.

(a) The governor, as chief executive and planning officer of this state, may perform the duties and functions assigned to the governor by federal law.

(b) The governor may transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the governor's office to another agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.004. CAPITAL EXPENDITURE REVIEW PROGRAM. (a) The governor by executive order may establish a program to comply with federal law to review capital expenditures made by or on behalf of a health care facility if the governor finds that the program is necessary to prevent the loss of federal funds.

(b) The governor may authorize the program to negotiate an agreement on behalf of the state with the Secretary of Health and Human Services to administer a state capital expenditure review program under Section 1122 of the Social Security Act (42 U.S.C.

Section 1320a-1), the federal rules and regulations adopted under that Act, or other pertinent federal authority.

(c) If necessary, the governor may use any available funds to implement the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.005. EXECUTIVE ORDER. (a) An order issued under Section 225.004(a) must contain the governor's findings, including a brief description of the reason for the findings.

(b) An unrescinded order issued under Section 225.004(a) that has not expired on its own terms expires on September 1 after the next regular legislative session that begins after the date on which the order is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **SUBTITLE B. LICENSING OF HEALTH FACILITIES**

### **CHAPTER 241. HOSPITALS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 241.001. SHORT TITLE. This chapter may be cited as the Texas Hospital Licensing Law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.002. PURPOSE. The purpose of this chapter is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.003. DEFINITIONS. In this chapter:

(1) "Advanced practice nurse" means a registered nurse recognized as an advanced practice nurse by the Texas Board of Nursing.

(2) "Board" means the Texas Board of Health.



(3) "Comprehensive medical rehabilitation hospital" means a general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(4) "Department" means the Texas Department of Health.

(5) "General hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(6) "Governmental unit" means a political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(7) "Hospital" includes a general hospital and a special hospital.

(8) "Medical staff" means a physician or group of physicians and a podiatrist or a group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(9) "Pediatric and adolescent hospital" means a general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(10) "Person" means an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(11) "Physician" means a physician licensed by the Texas State Board of Medical Examiners.

(12) "Physician assistant" means a physician assistant licensed by the Texas State Board of Physician Assistant Examiners.

(13) "Podiatrist" means a podiatrist licensed by the Texas State Board of Podiatric Medical Examiners.

(14) Repealed by Acts 2005, 79th Leg., Ch. 1286, Sec. 2, eff. September 1, 2005.

(15) "Special hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 79, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 43, Sec. 1, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 428, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1286 (H.B. [2471](#)), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 67, eff. September 1, 2007.

Sec. 241.004. EXEMPTIONS. This chapter does not apply to a facility:

(1) licensed under Chapter 242 or 577;

(2) maintained or operated by the federal government or an agency of the federal government; or

(3) maintained or operated by this state or an agency of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 76, Sec. 16, eff. Sept. 1, 1991.

Sec. 241.005. EMPLOYMENT OF PERSONNEL. The department may employ stenographers, inspectors, and other necessary assistants in

carrying out the provisions of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.006. COORDINATION OF SIGNAGE REQUIREMENTS IMPOSED BY STATE AGENCIES. (a) The department is authorized to review current and proposed state rules issued by the department or by other state agencies that mandate that a hospital place or post a notice, poster, or sign in a conspicuous place or in an area of high public traffic, concerning the rights of patients or others or the responsibilities of the hospital, which is directed at patients, patients' families, or others. The purpose of this review shall be to coordinate the placement, format, and language contained in the required notices in order to:

- (1) eliminate the duplication of information;
- (2) reduce the potential for confusion to patients, patients' families, and others; and
- (3) reduce the administrative burden of compliance on hospitals.

(b) Notwithstanding any other law, this section applies to all notices, posters, or signs described in Subsection (a).

Added by Acts 1995, 74th Leg., ch. 965, Sec. 3, eff. June 16, 1995.

Sec. 241.007. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A hospital shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 6, eff. September 1, 2011.

Sec. 241.008. INDUCED DELIVERIES OR CESAREAN SECTIONS BEFORE 39TH WEEK. A hospital that provides obstetrical services shall collaborate with physicians providing services at the hospital to develop quality initiatives to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 299 (H.B. 1983), Sec. 2, eff. September 1, 2011.

Redesignated from Health and Safety Code, Section 241.007 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(25), eff. September 1, 2013.

Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In this section:

(1) "Health care provider" means a person who provides health care services at a hospital as a physician, as an employee of the hospital, under a contract with the hospital, or in the course of a training or educational program at the hospital.

(2) "Hospital" means a hospital licensed under this chapter.

(b) A hospital shall adopt a policy requiring a health care provider providing direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(1) at minimum the provider's first or last name;

(2) the department of the hospital with which the provider is associated;

(3) the type of license held by the provider, if the provider holds a license under Title 3, Occupations Code; and

(4) if applicable, the provider's status as a student, intern, trainee, or resident.

Added by Acts 2013, 83rd Leg., R.S., Ch. 108 (S.B. 945), Sec. 1, eff. January 1, 2014.

#### **SUBCHAPTER B. HOSPITAL LICENSES**

Sec. 241.021. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a hospital in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.022. LICENSE APPLICATION. (a) An application for a license must be made to the department on a form provided by the department.

(b) The application must contain:

(1) the name and social security number of the sole proprietor, if the applicant is a sole proprietor;

(2) the name and social security number of each general partner who is an individual, if the applicant is a partnership;

(3) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the applicant is a corporation; and

(4) any other information that the department may reasonably require.

(c) The department shall require that each hospital show evidence that:

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed;

(2) the governing body of the hospital has adopted and implemented a patient transfer policy in accordance with Section 241.027; and

(3) if the governing body has chosen to implement patient transfer agreements, it has implemented the agreements in accordance with Section 241.028.

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy;

(2) a nonrefundable license fee;

(3) copies of the hospital's patient transfer agreements, unless the filing of copies has been waived by the hospital licensing director in accordance with the rules adopted under this chapter; and

(4) a copy of the most recent annual fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(e) The department may require that the application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation. A hospital located outside the limits of a municipality shall comply with corresponding state laws.

(f) The department shall post on the department's Internet website a list of all of the individuals named in applications as required by Subsections (b)(1)-(3). The department may not post on its Internet website a social security number of an individual required to be named in an application under Subsections (b)(1)-(3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 82, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 1, eff. September 1, 2005.

Sec. 241.023. ISSUANCE OF LICENSE. (a) On receiving a license application and the license fee, the department shall issue a license if it finds that the applicant and the hospital comply with this chapter and the rules or standards adopted under this chapter.

(b) A license may be renewed annually after payment of the required fee and submission of an application for license renewal that contains the information required by Section 241.022(b).

(c) Except as provided by Subsection (c-1), the department may issue a license only for the premises of a hospital and person or governmental unit named in the application.

(c-1) The department may issue one license for multiple hospitals if:

(1) all buildings in which inpatients receive hospital services and inpatient services of each of the hospitals to be included in the license are subject to the control and direction of the same governing body;

(2) all buildings in which inpatients receive hospital services are within a 30-mile radius of the main address of the applicant;

(3) there is integration of the organized medical staff of each of the hospitals to be included in the license;

(4) there is a single chief executive officer for all of the hospitals who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(5) there is a single chief medical officer for all of the

hospitals who reports directly to the governing body and who is responsible for all medical staff activities of the hospital;

(6) each building of a hospital to be included in the license that is geographically separate from other buildings of the same hospital contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination of diagnostic or laboratory services, in the building for hospital inpatients; and

(7) each hospital that is to be included in the license complies with the emergency services standards:

(A) for a general hospital, if the hospital provides surgery or obstetrical care or both; or

(B) for a special hospital, if the hospital does not provide surgery or obstetrical care.

(c-2) The hospital licensing director may recommend a waiver of the requirement of Subsection (c-1)(7) for a hospital if another hospital that is to be included in the license:

(1) complies with the emergency services standards for a general hospital; and

(2) is in close geographic proximity to the hospital.

(c-3) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement the waiver provision of Subsection (c-2). The rules must provide for a determination by the department that the waiver will facilitate the creation or operation of the hospital seeking the waiver and that the waiver is in the best interest of the individuals served or to be served by the hospital.

(d) Subject to Subsection (e), a license issued under this section for a hospital includes each outpatient facility that is not separately licensed, that is located apart from the hospital, and for which the hospital has submitted to the department:

(1) a copy of a fire safety survey that is dated not earlier than one year before the submission date indicating approval by:

(A) the local fire authority in whose jurisdiction the outpatient facility is located; or

(B) the nearest fire authority, if the outpatient facility is located outside of the jurisdiction of a local fire authority; and

(2) if the hospital is accredited by the Joint Commission

on Accreditation of Healthcare Organizations or the American Osteopathic Association, a copy of documentation from the accrediting body showing that the outpatient facility is included within the hospital's accreditation.

(e) Subsection (d) applies only if the federal Department of Health and Human Services, Health Care Financing Administration, or Office of Inspector General adopts final or interim final rules requiring state licensure of outpatient facilities as a condition of the determination of provider-based status for Medicare reimbursement purposes.

(f) A license may not be transferred or assigned without the written approval of the department.

(g) A license shall be posted in a conspicuous place on the licensed premises.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 2.01, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1286 (H.B. 2471), Sec. 1, eff. September 1, 2005.

Sec. 241.024. HOSPITAL LICENSING DIRECTOR. (a) The commissioner of health shall appoint, with the advice and consent of the board, a person to serve as hospital licensing director.

(b) A person appointed as the hospital licensing director must:

- (1) have at least five years experience or training, or both, in the field of hospital administration;
- (2) be of good moral character; and
- (3) have been a resident of this state for at least three years.

(c) The hospital licensing director shall administer this chapter and is directly responsible to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.025. LICENSE FEES. (a) The department shall charge each hospital an annual license fee for an initial license or a



license renewal.

(b) The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule under which the number of beds in the hospital determines the amount of the fee. The fee may not exceed \$15 a bed. A minimum license fee may be established. The minimum fee may not exceed \$1,000.

(c) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(d) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. These fees are hereby appropriated to the department.

(e) Notwithstanding Subsection (d), to the extent that money received from the fees collected under this chapter exceeds the costs to the department to conduct the activity for which the fee is imposed, the department may use the money to administer Chapter 324 and similar laws that require the department to provide information related to hospital care to the public. The department may not consider the costs of administering Chapter 324 or similar laws in adopting a fee imposed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.02, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. [1731](#)), Sec. 4, eff. September 1, 2007.

Sec. 241.026. RULES AND MINIMUM STANDARDS. (a) The board shall adopt and enforce rules to further the purposes of this chapter. The rules at a minimum shall address:

- (1) minimum requirements for staffing by physicians and nurses;
- (2) hospital services relating to patient care;
- (3) fire prevention, safety, and sanitation requirements in hospitals;
- (4) patient care and a patient bill of rights;
- (5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and

(6) compliance with nursing peer review under Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and the rules of the Texas Board of Nursing relating to peer review.

(b) In adopting rules, the board shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of the Joint Commission on Accreditation of Healthcare Organizations and will attempt to achieve consistency with those conditions and standards.

(c) Upon the recommendation of the hospital licensing director and the council, the board by order may waive or modify the requirement of a particular provision of this Act or minimum standard adopted by board rule under this section to a particular general or special hospital if the board determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(d) The board shall adopt rules establishing procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital.

(e) If the board orders a waiver or modification of a provision or standard, the licensing record of the hospital granted the waiver or modification shall contain documentation to support the board's action. The board's rules shall specify the type and specificity of the supporting documentation that must be included.

(f) A comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital shall have an emergency treatment room but is not required to have an emergency department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 350, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 4, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 43, Sec. 2, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 617, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.786, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 68, eff.

September 1, 2007.

Sec. 241.0262. CIRCULATING DUTIES FOR SURGICAL SERVICES. Circulating duties in the operating room must be performed by qualified registered nurses. In accordance with approved medical staff policies and procedures, licensed vocational nurses and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse circulator.

Added by Acts 2005, 79th Leg., Ch. 966 (H.B. 1718), Sec. 2, eff. September 1, 2005.

Sec. 241.0263. RECOMMENDATIONS RELATING TO MISSING INFANTS.

- (a) The department shall recommend hospital security procedures to:
- (1) reduce the likelihood of infant patient abduction; and
  - (2) aid in the identification of missing infants.
- (b) In making recommendations, the department shall consider hospital size and location and the number of births at a hospital.
- (c) The procedures recommended by the department under Subsection (a)(1) may include:
- (1) controlling access to newborn nurseries;
  - (2) expanding observation of newborn nurseries through the use of video cameras; and
  - (3) requiring identification for hospital staff and visitors as a condition of entrance to newborn nurseries.
- (d) The procedures recommended by the department under Subsection (a)(2) may include:
- (1) footprinting, photographing, or writing descriptions of infant patients at birth; and
  - (2) obtaining umbilical cord blood samples for infant patients born at the hospital and storing the samples for genetic testing purposes.
- (e) Each hospital licensed under this chapter shall consider implementing the procedures recommended under this section.

Added by Acts 1997, 75th Leg., ch. 314, Sec. 1, eff. Sept. 1, 1997.

Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND

CHEMICAL DEPENDENCY. (a) The care and treatment of a patient receiving mental health services in a facility licensed by the department under this chapter or Chapter 577 are governed by the standards adopted by the Texas Department of Mental Health and Mental Retardation to the same extent as if the standards adopted by that department were rules adopted by the board under this chapter or Chapter 577.

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the department under this chapter are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464 and that are adopted by the Texas Commission on Alcohol and Drug Abuse, to the same extent as if the standards adopted by the commission were rules adopted by the board under this chapter.

(c) The department shall enforce the standards provided by Subsections (a) and (b). A violation of a standard is subject to the same consequence as a violation of a rule adopted by the board under this chapter or Chapter 577. The department is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.02, eff. Sept. 1, 1993.

Sec. 241.027. PATIENT TRANSFERS. (a) The board shall adopt rules to govern the transfer of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements.

(b) The rules must provide that patient transfers between hospitals be accomplished through hospital policies that result in medically appropriate transfers from physician to physician and from hospital to hospital by providing:

(1) for notification to the receiving hospital before the patient is transferred and confirmation by the receiving hospital that the patient meets the receiving hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) for the use of medically appropriate life support

measures that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use to stabilize the patient before the transfer and to sustain the patient during the transfer;

(3) for the provision of appropriate personnel and equipment that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use for the transfer;

(4) for the transfer of all necessary records for continuing the care for the patient; and

(5) that the transfer of a patient not be predicated on arbitrary, capricious, or unreasonable discrimination because of race, religion, national origin, age, sex, physical condition, or economic status.

(c) The rules must require that if a patient at a hospital has an emergency medical condition which has not been stabilized, the hospital may not transfer the patient unless:

(1) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility;

(2) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(3) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in Subdivision (2) after a licensed physician, in consultation with the person, has made the determination described in such clause and subsequently countersigns the certificate.

(d) The rules also shall provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The rules must require that a hospital take all reasonable steps to secure the informed refusal of a patient or of a person

acting on the patient's behalf to a transfer or to related examination and treatment.

(f) The rules must recognize any contractual, statutory, or regulatory obligations that may exist between a patient and a designated or mandated provider as those obligations apply to the transfer of emergency or nonemergency patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 83, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 5, eff. Sept. 1, 1993.

Sec. 241.028. TRANSFER AGREEMENTS. (a) If hospitals execute a transfer agreement that is consistent with the requirements of this section, all patient transfers between the hospitals are governed by the agreement.

(b) The hospitals shall submit the agreement to the department for review for compliance with the requirements of this section. The department shall complete the review of the agreement within 30 days after the date the agreement is submitted by the hospitals.

(c) At a minimum, a transfer agreement must provide that:

(1) transfers be accomplished in a medically appropriate manner and comply with Sections 241.027(b)(2) through (5) and Section 241.027(c);

(2) the transfer or receipt of patients in need of emergency care not be based on the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals recognize the right of an individual to request transfer to the care of a physician and hospital of the individual's choice;

(5) the hospitals recognize and comply with the requirements of Chapter 61 (Indigent Health Care and Treatment Act) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient.

(d) If a hospital transfers a patient in violation of Subsection (c)(1), (2), (4), (5), or (6), relating to required

provisions for a transfer agreement, the violation is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 84, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 6, eff. Sept. 1, 1993.

Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE SAFETY. (a) The governing body of a hospital shall adopt policies and procedures related to the work environment for nurses to:

(1) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(2) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(b) The policies and procedures adopted under Subsection (a), at a minimum, must include:

(1) evaluating new products and technology that incorporate ergonomic principles;

(2) educating nurses in the application of ergonomic practices;

(3) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(4) controlling access to those areas identified as having a high risk of violence; and

(5) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 13, eff. June 20, 2003.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 241.051. INSPECTIONS. (a) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other

enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce this chapter, the rules adopted under this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other enforcement procedures.

(c) By applying for or holding a hospital license, the hospital consents to entry and inspection of the hospital by the department or a representative of the department in accordance with this chapter and the rules adopted under this chapter.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the hospital, which notice shall include the provisions of law which the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;
- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 8, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1444, Sec. 15, eff. Aug. 30, 1999.

Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS. (a) A hospital that is in operation when an applicable rule or minimum standard is adopted under this chapter must be given a reasonable period within which to comply with the rule or standard.

(b) The period for compliance may not exceed six months, except that the department may extend the period beyond six months if the hospital sufficiently shows the department that it requires additional time to complete compliance with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.053. DENIAL OF APPLICATION, SUSPENSION, REVOCATION, PROBATION, OR REISSUANCE OF LICENSE. (a) The department, after providing notice and an opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a hospital's license if the department finds that the hospital:

(1) failed to comply with:

(A) a provision of this chapter;

(B) a rule adopted under this chapter;

(C) a special license condition;

(D) an order or emergency order by the commissioner of health; or

(E) another enforcement procedure permitted under this chapter;

(2) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance; or

(3) has aided, abetted, or permitted the commission of an illegal act.

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation of the hospital's license, the initiation of enforcement

action against the hospital, the assessment of administrative penalties, or the issuance of a court order enjoining the hospital from violations or assessing civil penalties against the hospital. A hospital whose license is suspended or revoked may not admit new patients until the license is reissued.

(c) A hospital must apply for reissuance in the form and manner required in the rules adopted under this chapter.

(d) Administrative hearings required under this section shall be conducted under the board's formal hearing rules and the contested case provisions of Chapter 2001, Government Code.

(e) Judicial review of a final decision by the department is by trial de novo in the same manner as a case appealed from the justice court to the county court. The substantial evidence rule does not apply.

(f) If the department finds that a hospital is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital for probation rather than suspending or revoking the hospital's license. The department shall provide notice to the hospital of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital will remain under probation. During the probation period, the hospital must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a hospital that does not correct items that were in noncompliance or that does not comply with the applicable requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 9, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 1, 2, eff. June 20, 2003.

Sec. 241.0531. COMMISSIONER'S EMERGENCY ORDERS. (a) Following notice to the hospital and opportunity for hearing, the commissioner

of health or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief issued pursuant to Section 241.054, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(b) The department shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(c) The hearing shall not be governed by the contested case provisions of Chapter 2001, Government Code but shall instead be held in accordance with the board's informal hearing rules.

(d) The order shall be effective on delivery to the hospital or at a later date specified in the order.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 10, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995.

Sec. 241.054. VIOLATIONS; INJUNCTIONS. (a) The department shall:

(1) notify a hospital of a finding by the department that the hospital is violating or has violated this chapter or a rule or standard adopted under this chapter; and

(2) provide the hospital an opportunity to correct the violation.

(b) After the notice and opportunity to comply, the commissioner of health may request the attorney general or the appropriate district or county attorney to institute and conduct a suit for a violation of this chapter or a rule adopted under this chapter.

(c) The department may petition a district court for a temporary restraining order to restrain a continuing violation if the

department finds that the violation creates an immediate threat to the health and safety of the patients of a hospital.

(d) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action in the name of the state for a violation of this chapter or a rule adopted under this chapter.

(e) The district court shall assess the civil penalty authorized by Section 241.055, grant injunctive relief, or both, as warranted by the facts. The injunctive relief may include any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(f) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(g) Venue may be maintained in Travis County or in the county in which the violation occurred.

(h) Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of a referral from the department before filing suit.

(i) The injunctive relief and civil penalty authorized by this section and Section 241.055 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.02, eff. Sept. 1, 1993.

Sec. 241.055. CIVIL PENALTY. (a) A hospital shall timely adopt, implement, and enforce a patient transfer policy in accordance with Section 241.027. A hospital may implement patient transfer agreements in accordance with Section 241.028.

(b) A hospital that violates Subsection (a), another provision

of this chapter, or a rule adopted or enforced under this chapter is liable for a civil penalty of not more than \$1,000 for each day of violation and for each act of violation. A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services is liable for a civil penalty of not more than \$25,000 for each day of violation and for each act of violation.

(c) In determining the amount of the penalty, the district court shall consider:

- (1) the hospital's previous violations;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (3) whether the health and safety of the public was threatened by the violation;
- (4) the demonstrated good faith of the hospital; and
- (5) the amount necessary to deter future violations.

(d) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 86, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 11, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.03, eff. Sept. 1, 1993.

Sec. 241.056. SUIT BY PERSON HARMED. (a) A person who is harmed by a violation under Section 241.028 or 241.055 may petition a district court for appropriate injunctive relief.

(b) Venue for a suit brought under this section is in the county in which the person resides or, if the person is not a resident of this state, in Travis County.

(c) The person may also pursue remedies for civil damages under common law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 87, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 12, eff. Sept. 1, 1993.

Sec. 241.057. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a hospital without a license.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not require the commissioner of health or a designee of the commissioner to report a minor violation for prosecution or the institution of any other enforcement proceeding authorized under this chapter, if the commissioner or a designee of the commissioner determines that prosecution or enforcement is not in the best interests of the persons served or to be served by the hospital.

(b) For the purpose of this section, a "minor violation" means a violation of this chapter, the rules adopted under this chapter, a special license provision, an order or emergency order issued by the commissioner of health or the commissioner's designee, or another enforcement procedure permitted under this chapter by a hospital that does not constitute a threat to the health, safety, and rights of the hospital's patients or other persons.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 13, eff. Sept. 1, 1993.

Sec. 241.0585. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 241.058 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.041, eff. Sept. 1, 1993.

Sec. 241.059. ADMINISTRATIVE PENALTY. (a) The commissioner of health may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The commissioner shall assess an administrative penalty against a hospital that violates Section 166.004.

(b) In determining the amount of the penalty, the commissioner of health shall consider:

- (1) the hospital's previous violations;
- (2) the seriousness of the violation;
- (3) any threat to the health, safety, or rights of the hospital's patients;
- (4) the demonstrated good faith of the hospital; and
- (5) such other matters as justice may require.

(c) The penalty may not exceed \$1,000 for each violation, except that the penalty for a violation of Section 166.004 shall be \$500. Each day of a continuing violation, other than a violation of Section 166.004, may be considered a separate violation.

(d) When it is determined that a violation has occurred the commissioner of health shall issue a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner of health shall give written notice of the report to the person, delivered by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner of health or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended

penalty of the commissioner of health, the commissioner by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner of health shall set a hearing and give notice of the hearing to the person. The hearing shall be held by the department. The person conducting the hearing shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of the penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner of health's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner of health's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the



amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of health by certified mail.

(1) When the commissioner of health receives a copy of an affidavit under Subsection (k)(2), he may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner of health may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner of health:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person within 30 days after the judgment of the court becomes final. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 14, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (53), (55), (60), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 450, Sec. 2.03, eff. Sept. 1, 1999.

Sec. 241.060. ADMINISTRATIVE PENALTY FOR MENTAL HEALTH, CHEMICAL DEPENDENCY, OR REHABILITATION SERVICES. (a) The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person

has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for

placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(1) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York

Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.04, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 241.058 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(22), eff. Sept. 1, 1995.

#### **SUBCHAPTER E. STAFF, RECORDS, AND PLAN REVIEWS**

Sec. 241.101. HOSPITAL AUTHORITY CONCERNING MEDICAL STAFF. (a) Except as otherwise provided by this section and Section 241.102, this chapter does not change the authority of the governing body of a hospital, as it considers necessary or advisable, to:

- (1) make rules, standards, or qualifications for medical staff membership; or
- (2) grant or refuse to grant membership on the medical staff.

(b) This chapter does not prevent the governing body of a hospital from adopting reasonable rules and requirements in compliance with this chapter relating to:

- (1) qualifications for any category of medical staff appointments;
- (2) termination of appointments; or
- (3) the delineation or curtailment of clinical privileges of those who are appointed to the medical staff.

(c) The process for considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges must afford each physician, podiatrist, and dentist procedural due process that meets

the requirements of 42 U.S.C. Section 11101 et seq., as amended.

(d) If a hospital's credentials committee has failed to take action on a completed application as required by Subsection (k), or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Chapter 154, Civil Practice and Remedies Code. The mediation shall be conducted by a person meeting the qualifications required by Section 154.052, Civil Practice and Remedies Code, and within a reasonable period of time.

(e) Subsection (d) does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(f) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(g) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(h) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(i) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council on Graduate Medical Education and by the American Osteopathic Association.

(j) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(k) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day

after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 77, Sec. 1, eff. May 11, 1995; Acts 1999, 76th Leg., ch. 159, Sec. 1, eff. May 21, 1999; Acts 2001, 77th Leg., ch. 1175, Sec. 1, eff. June 15, 2001.

Sec. 241.1015. PHYSICIAN COMMUNICATION AND CONTRACTS. (a) A hospital, whether by contract, by granting or withholding staff privileges, or otherwise, may not restrict a physician's ability to communicate with a patient with respect to:

- (1) the patient's coverage under a health care plan;
- (2) any subject related to the medical care or health care services to be provided to the patient, including treatment options that are not provided under a health care plan;
- (3) the availability or desirability of a health care plan or insurance or similar coverage, other than the patient's health care plan; or
- (4) the fact that the physician's staff privileges or contract with a hospital or health care plan have terminated or that the physician will otherwise no longer be providing medical care or health care services at the hospital or under the health care plan.

(b) A hospital, by contract or otherwise, may not refuse or fail to grant or renew staff privileges, or condition staff privileges, based in whole or in part on the fact that the physician or a partner, associate, or employee of the physician is providing medical or health care services at a different hospital or hospital system.

(c) A hospital may not contract to limit a physician's participation or staff privileges or the participation or staff privileges of a partner, associate, or employee of the physician at a different hospital or hospital system.

(d) This section does not prevent a hospital from entering into contracts with physicians to ensure physician availability and coverage at the hospital or to comply with regulatory requirements or quality of care standards established by the governing body of the hospital.

(e) This section does not prevent the governing body of a hospital from:

(1) limiting the number of physicians granted medical staff membership or privileges at the hospital based on a medical staff development plan that is unrelated to a physician's professional or business relationships or associations including those with another physician or group of physicians or to a physician or a partner, associate, or employee of a physician having medical staff membership or privileges at another hospital or hospital system; or

(2) limiting the ability of hospital medical directors to contract with or hold medical staff memberships or clinical privileges at different hospitals or hospital systems provided that such limitations do not extend to the medical directors' professional or business relationships or associations including those with another physician, group of physicians, or other health care providers, other than hospitals or hospital systems.

(f) A contract provision that violates this section is void.

(g) In this section, "health care plan" has the meaning assigned by Section 843.002, Insurance Code, and "hospital medical directors" means physicians who have been employed by or are under contract with a hospital to manage a clinical department or departments of the hospital.

Added by Acts 1997, 75th Leg., ch. 735, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.526, eff. Sept. 1, 2003.

Sec. 241.102. AUTHORIZATIONS AND RESTRICTIONS IN RELATION TO PHYSICIANS AND PODIATRISTS. (a) This chapter does not authorize a physician or podiatrist to perform medical or podiatric acts that are beyond the scope of the respective license held.

(b) This chapter does not prevent the governing body of a hospital from providing that:

(1) a podiatric patient be coadmitted to the hospital by a



podiatrist and a physician;

(2) a physician be responsible for the care of any medical problem or condition of a podiatric patient that may exist at the time of admission or that may arise during hospitalization and that is beyond the scope of the podiatrist's license; or

(3) a physician determine the risk and effect of a proposed podiatric surgical procedure on the total health status of the patient.

(c) An applicant for medical staff membership may not be denied membership solely on the ground that the applicant is a podiatrist rather than a physician.

(d) This chapter does not automatically entitle a physician or a podiatrist to membership or privileges on a medical staff.

(e) The governing body of a hospital may not require a member of the medical staff to involuntarily:

(1) coadmit patients with a podiatrist;

(2) be responsible for the care of any medical problem or condition of a podiatric patient; or

(3) determine the risk and effect of any proposed podiatric procedure on the total health status of the patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.103. PRESERVATION OF RECORDS. (a) A hospital may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when the patient was last treated, the hospital may authorize the disposal of medical records relating to the patient on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the date on which the patient was last treated, whichever date is later.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(d) A hospital shall provide written notice to a patient, or a patient's legally authorized representative as that term is defined by Section 241.151, that the hospital, unless the exception in Subsection (c) applies, may authorize the disposal of medical records

relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 466 (H.B. 118), Sec. 1, eff. September 1, 2011.

Sec. 241.104. HOSPITAL PLAN REVIEWS. (a) The board by rule shall adopt fees for hospital plan reviews according to a schedule based on the estimated construction costs.

(b) The fee schedule may not exceed the following:

Cost of Construction Fee

- |     |                             |         |
|-----|-----------------------------|---------|
| (1) | \$ 100,000 or less          | \$ 500  |
| (2) | \$ 100,001 - \$ 600,000     | \$1,500 |
| (3) | \$ 600,001 - \$ 2,000,000   | \$3,000 |
| (4) | \$ 2,000,001 - \$ 5,000,000 | \$4,500 |
| (5) | \$ 5,000,001 - \$10,000,000 | \$6,000 |
| (6) | \$ 10,000,001 and over      | \$7,500 |

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of \$500 and a maximum fee of \$1,000 for each survey conducted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 15, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.03, eff. Sept. 1, 1999.

Sec. 241.105. HOSPITAL PRIVILEGES FOR ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS. (a) The governing body of a hospital is authorized to establish policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants,

including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(b) If the governing body of a hospital has adopted a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(c) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(d) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the advanced practice nurse or physician assistant in writing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(e) Nothing in this section shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301,

Occupations Code, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(f) This section does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

Added by Acts 1999, 76th Leg., ch. 428, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.787, eff. Sept. 1, 2001.

#### **SUBCHAPTER F. MEDICAL REHABILITATION SERVICES**

Sec. 241.121. DEFINITION. In this subchapter, "comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.122. LICENSE REQUIRED. Unless a person has a license issued under this chapter, a person other than an individual may not provide inpatient comprehensive medical rehabilitation to a patient who requires medical services that are provided under the supervision of a physician and that are more intensive than nursing facility care and minor treatment.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.123. REHABILITATION SERVICES STANDARDS. (a) The board by rule shall adopt standards for the provision of rehabilitation services by a hospital to ensure the health and safety of a patient receiving the services.

(b) The standards adopted by the board at a minimum shall require a hospital that provides comprehensive medical rehabilitation:

(1) to have a director of comprehensive medical rehabilitation who is:

- (A) a licensed physician;
- (B) either board certified or eligible for board certification in a medical specialty related to rehabilitation; and
- (C) qualified by training and experience to serve as medical director;

(2) to have medical supervision by a licensed physician for 24 hours each day; and

(3) to provide appropriate therapy to each patient by an interdisciplinary team consisting of licensed physicians, rehabilitation nurses, and therapists as are appropriate for the patient's needs.

(c) An interdisciplinary team for comprehensive medical rehabilitation shall be directed by a licensed physician. An interdisciplinary team for comprehensive medical rehabilitation shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

- (1) physical therapy;
- (2) occupational therapy;
- (3) speech-language pathology;
- (4) therapeutic recreation;
- (5) social services and case management;
- (6) dietetics;
- (7) psychology;
- (8) respiratory therapy;
- (9) rehabilitative nursing;
- (10) certified orthotics; and
- (11) certified prosthetics.

(d) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written treatment plan designed for that patient's needs for treatment and care. The board by rule shall specify a time after admission of a patient for inpatient rehabilitation services by which a hospital must evaluate the patient for the patient's initial treatment plan and by which a hospital must provide copies of the plan after evaluation.

(e) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written continuing care plan that addresses the patient's needs for care after discharge, including

recommendations for treatment and care and information about the availability of resources for treatment or care. The board by rule shall specify the time before discharge by which the hospital must provide a copy of the continuing care plan. The board's rules may allow a facility to provide the continuing care plan by a specified time after discharge if providing the plan before discharge is impracticable.

(f) A hospital shall provide a copy of a treatment or continuing care plan prepared under this section to the following persons in the person's primary language, if practicable:

- (1) the patient;
- (2) a person designated by the patient; and
- (3) as specified by board rule, family members or other persons with responsibility for or demonstrated participation in the patient's care or treatment.

(g) Rules adopted by the board under this subchapter may not conflict with a federal rule, regulation, or standard.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER G. DISCLOSURE OF HEALTH CARE INFORMATION**

Sec. 241.151. DEFINITIONS. In this subchapter:

(1) "Directory information" means information disclosing the presence of a person who is receiving inpatient, outpatient, or emergency services from a licensed hospital, the nature of the person's injury, the person's municipality of residence, sex, and age, and the general health status of the person as described in terms of "critical," "poor," "fair," "good," "excellent," or similar terms.

(2) "Health care information" means information, including payment information, recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.

(3) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(4) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized

under federal or state law to review or approve the initiation of or conduct periodic review of research programs to ensure the protection of the rights and welfare of human research subjects.

(5) "Legally authorized representative" means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(C) an agent of the patient authorized under a durable power of attorney for health care;

(D) an attorney ad litem appointed for the patient;

(E) a person authorized to consent to medical treatment on behalf of the patient under Chapter 313;

(F) a guardian ad litem appointed for the patient;

(G) a personal representative or heir of the patient, as defined by Section 3, Texas Probate Code, if the patient is deceased;

(H) an attorney retained by the patient or by the patient's legally authorized representative; or

(I) a person exercising a power granted to the person in the person's capacity as an attorney-in-fact or agent of the patient by a statutory durable power of attorney that is signed by the patient as principal.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 498, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1138 (H.B. 2765), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 1, eff. September 1, 2009.

Sec. 241.152. WRITTEN AUTHORIZATION FOR DISCLOSURE OF HEALTH CARE INFORMATION. (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

(b) A disclosure authorization to a hospital is valid only if it:

- (1) is in writing;
- (2) is dated and signed by the patient or the patient's legally authorized representative;
- (3) identifies the information to be disclosed;
- (4) identifies the person or entity to whom the information is to be disclosed; and
- (5) is not contained in the same document that contains the consent to medical treatment obtained from the patient.

(c) A disclosure authorization is valid until the 180th day after the date it is signed unless it provides otherwise or unless it is revoked.

(d) Except as provided by Subsection (e), a patient or the patient's legally authorized representative may revoke a disclosure authorization to a hospital at any time. A revocation is valid only if it is in writing, dated with a date that is later than the date on the original authorization, and signed by the patient or the patient's legally authorized representative.

(e) A patient or the patient's legally authorized representative may not revoke a disclosure that is required for purposes of making payment to the hospital for health care provided to the patient.

(f) A patient may not maintain an action against a hospital for a disclosure made by the hospital in good-faith reliance on an authorization if the hospital's medical record department did not have notice that the authorization was revoked.

(g) Repealed by Acts 1997, 75th Leg., ch. 498, Sec. 5, eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 2, 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1999.

Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION. A patient's health care information may be disclosed without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the hospital not to make the disclosure or the directory



information is otherwise protected by state or federal law;

(2) to a health care provider who is rendering health care to the patient when the request for the disclosure is made;

(3) to a transporting emergency medical services provider for the purpose of:

(A) treatment or payment, as those terms are defined by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(B) the following health care operations described by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191):

(i) quality assessment and improvement activities;

(ii) specified insurance functions;

(iii) conducting or arranging for medical reviews;

or

(iv) competency assurance activities;

(4) to a member of the clergy specifically designated by the patient;

(5) to a procurement organization as defined in Section 692A.002 for the purpose of making inquiries relating to donations according to the protocol referred to in Section 692A.015;

(6) to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician;

(7) to a person authorized to consent to medical treatment under Chapter 313 or to a person in a circumstance exempted from Chapter 313 to facilitate the adequate provision of treatment;

(8) to an employee or agent of the hospital who requires health care information for health care education, quality assurance, or peer review or for assisting the hospital in the delivery of health care or in complying with statutory, licensing, accreditation, or certification requirements and if the hospital takes appropriate action to ensure that the employee or agent:

(A) will not use or disclose the health care information for any other purpose; and

(B) will take appropriate steps to protect the health care information;

(9) to a federal, state, or local government agency or authority to the extent authorized or required by law;

(10) to a hospital that is the successor in interest to the hospital maintaining the health care information;

(11) to the American Red Cross for the specific purpose of fulfilling the duties specified under its charter granted as an instrumentality of the United States government;

(12) to a regional poison control center, as the term is used in Chapter 777, to the extent necessary to enable the center to provide information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(13) to a health care utilization review agent who requires the health care information for utilization review of health care under Chapter 4201, Insurance Code;

(14) for use in a research project authorized by an institutional review board under federal law;

(15) to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient;

(16) to facilitate reimbursement to a hospital, other health care provider, or the patient for medical services or supplies;

(17) to a health maintenance organization for purposes of maintaining a statistical reporting system as required by a rule adopted by a state agency or regulations adopted under the federal Health Maintenance Organization Act of 1973, as amended (42 U.S.C. Section 300e et seq.);

(18) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code;

(19) to comply with a court order except as provided by Subdivision (20); or

(20) related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under:

(A) the Texas Rules of Civil Procedure or Code of Criminal Procedure; or

(B) Chapter 121, Civil Practice and Remedies Code.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 3, eff. Sept. 1, 1997;  
Acts 1997, 75th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 136 (H.B. 739), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 337 (S.B. 1113), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 2, eff. September 1, 2009.

Sec. 241.1531. EXCHANGE OF INMATE'S HEALTH CARE INFORMATION. Notwithstanding any other law of this state, the health care information of a patient who is a defendant or inmate confined in a facility operated by or under contract with the Texas Department of Criminal Justice may be exchanged between health care personnel of the department and health care personnel of The University of Texas Medical Branch at Galveston or the Texas Tech University Health Sciences Center. The authorization of the defendant or inmate is not required for the exchange of information.

Added by Acts 2005, 79th Leg., Ch. 1270 (H.B. 2195), Sec. 1, eff. June 18, 2005.

Sec. 241.154. REQUEST. (a) On receipt of a written authorization from a patient or legally authorized representative to examine or copy all or part of the patient's recorded health care information, except payment information, or for disclosures under Section 241.153 not requiring written authorization, a hospital or its agent, as promptly as required under the circumstances but not later than the 15th day after the date the request and payment authorized under Subsection (b) are received, shall:

(1) make the information available for examination during regular business hours and provide a copy to the requestor, if requested; or

(2) inform the authorized requestor if the information does not exist or cannot be found.

(b) Except as provided by Subsection (d), the hospital or its

agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$30; and

(A) a charge for each page of:

(i) \$1 for the 11th through the 60th page of the provided copies;

(ii) 50 cents for the 61st through the 400th page of the provided copies; and

(iii) 25 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$45; and

(A) \$1 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$75; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Section 22.004, Civil Practice and Remedies Code; and

(2) written responses to a written set of questions, not to exceed \$10 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under Section 311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Chapter 408, Labor Code.

(e) Effective September 1, 1996, and annually thereafter, the fee for providing health care information as specified in this section shall be adjusted accordingly based on the most recent changes to the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

(f) A request from a patient or legally authorized representative for payment information is subject to Section 311.002.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 498, Sec. 4, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 2, eff. September 1, 2009.

Sec. 241.155. SAFEGUARDS FOR SECURITY OF HEALTH CARE INFORMATION. A hospital shall adopt and implement reasonable safeguards for the security of all health care information it maintains.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

Sec. 241.156. PATIENT REMEDIES. (a) A patient aggrieved by a violation of this subchapter relating to the unauthorized release of confidential health care information may bring an action for:

- (1) appropriate injunctive relief; and
- (2) damages resulting from the release.

(b) An action under Subsection (a) shall be brought in:

(1) the district court of the county in which the patient resides or in the case of a deceased patient the district court of the county in which the patient's legally authorized representative resides; or

(2) if the patient or the patient's legally authorized representative in the case of a deceased patient is not a resident of this state, the district court of Travis County.

(c) A petition for injunctive relief under Subsection (a)(1) takes precedence over all civil matters on the court docket except those matters to which equal precedence on the docket is granted by law.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

**Subchapter H, consisting of Secs. 241.181 to 241.187, was added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1.**

**For another Subchapter H, consisting of Secs. 241.181 to 241.184, added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, see Sec. 241.181 et seq., post.**

**SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE**

Sec. 241.181. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner, in accordance with the rules adopted under Section 241.183, shall assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital.

(b) A hospital may receive different level designations for neonatal and maternal care, respectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff.

September 1, 2013.

Sec. 241.183. RULES. (a) The executive commissioner, in consultation with the department, shall adopt rules:

- (1) establishing the levels of care for neonatal and maternal care to be assigned to hospitals;
- (2) prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;
- (3) establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;
- (4) establishing a process for amending the level of care designation requirements, including a process for assisting facilities in implementing any changes made necessary by the amendments;
- (5) dividing the state into neonatal and maternal care regions;
- (6) facilitating transfer agreements through regional coordination;
- (7) requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the facility's level of care designation; and
- (8) prohibiting the denial of a neonatal or maternal level of care designation to a hospital that meets the minimum requirements for that level of care designation.

(b) The criteria for levels one through three of neonatal and maternal care adopted under Subsection (a)(2) may not include requirements related to the number of patients treated at a hospital.

(c) The Health and Human Services Commission shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

(d) Each level of care designation must require a hospital to regularly submit outcome and other data to the department as required or requested.

(e) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet

website.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.184. CONFIDENTIALITY; PRIVILEGE. (a) All information and materials submitted by a hospital to the department under Section 241.183(d) are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are submitted by a hospital or an entity that has an ownership or management interest in a hospital.

(c) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials submitted to the department under Section 241.183(d).

(d) The submission of information or materials under Section 241.183(d) is not a waiver of a privilege or protection granted under law.

(e) The provisions of this section regarding the confidentiality of information or materials submitted by a hospital in compliance with Section 241.183(d) do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(f) A department summary or disclosure, including an assignment of a level of care designation, may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care practitioner, student, or trainee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.185. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a)



The executive commissioner, in consultation with the department, shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(b) Every three years, the executive commissioner and the department shall review the level of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

(c) A hospital may request a change of designation at any time. On request under this subsection, the executive commissioner and the department shall review the hospital's request and, as necessary, change the hospital's level of care designation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.186. HOSPITAL NOT DESIGNATED. A hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services:

(1) may not receive a level of care designation for those services; and

(2) is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable, except emergency services required to be provided or reimbursed under state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.187. PERINATAL ADVISORY COUNCIL. (a) In this section, "advisory council" means the Perinatal Advisory Council established under this section.

(b) The advisory council consists of 17 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

(3) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provides obstetrical care in a rural community;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) one representative from a rural hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(c) To the extent possible, the executive commissioner shall appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of five or six of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(e) A member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties.

(f) The department, with recommendations from the advisory council, shall develop a process for the designation and updates of levels of neonatal and maternal care at hospitals in accordance with this subchapter.

(g) The advisory council shall:

(1) develop and recommend criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develop and recommend a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

(4) examine utilization trends relating to neonatal and maternal care; and

(5) make recommendations related to improving neonatal and maternal outcomes.

(h) In developing the criteria for the levels of neonatal and maternal care, the advisory council shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists, including "Guidelines for Perinatal Care";

(2) any guidelines developed by the Society of Maternal-Fetal Medicine; and

(3) the geographic and varied needs of citizens of this state.

(i) In developing the criteria for designating levels one through three of neonatal and maternal care, the advisory council may not consider the number of patients treated at a hospital.

(j) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1, 2015.

(k) The advisory council shall continue to update its recommendations based on any relevant scientific or medical developments.

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this section expires September 1, 2025.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

**Subchapter H, consisting of Secs. 241.181 to 241.184, was added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1.**

**For another Subchapter H, consisting of Secs. 241.181 to 241.187, added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, see Sec. 241.181 et seq., post.**

**SUBCHAPTER H. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES  
ASSOCIATED WITH LICENSED HOSPITALS**

Sec. 241.181. APPLICABILITY. This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is exempt from the licensing requirements of Chapter 254 under Section 254.052(7) or (8).

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.

Sec. 241.182. ADVERTISING. A facility described by Section 241.181 may not advertise or hold itself out as a medical office, facility, or provider other than an emergency room if the facility charges for its services the usual and customary rate charged for the same service by a hospital emergency room in the same region of the state or located in a region of the state with comparable rates for emergency health care services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.

Sec. 241.183. POSTED NOTICE. Subject to Section 241.006, the department shall adopt rules for a notice to be posted in a conspicuous place in the facility described by Section 241.181 that notifies prospective patients that the facility is an emergency room and charges rates comparable to a hospital emergency room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.

Sec. 241.184. ADMINISTRATIVE PENALTY. The commissioner of health may assess an administrative penalty under Section 241.059 against a hospital that violates this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.

**CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

- (1) quality of life;
- (2) access to care;
- (3) continuity of care;
- (4) comprehensiveness of care;
- (5) coordination of services;
- (6) humaneness of treatment;
- (7) conservatism in intervention;
- (8) safety of the environment;
- (9) professionalism of caregivers; and
- (10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for

use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

- (1) providing the highest possible quality of care;
- (2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
- (3) imposing prompt and effective remedies for noncompliance with licensing standards; and
- (4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Human Services.
- (2) "Commissioner" means the commissioner of human services.
- (3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.
- (4) "Department" means the Department of Aging and Disability Services.
- (5) "Elderly person" means an individual who is 65 years of age or older.
- (5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (6) "Facility" means an institution.
- (7) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.
- (8) "Home" means an institution.
- (9) "Hospital" has the meaning assigned by Chapter 241

(Texas Hospital Licensing Law).

(10) "Institution" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 30, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 8.084, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 693, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1159, Sec. 1.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 404 (S.B. 870), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 1, eff. June 19, 2009.

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management

company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.03, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 1, eff. September 1, 2009.

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend



exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services, Health and Human Services Commission, Texas Department of Criminal Justice, and Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services or the executive commissioner of the Health and Human Services Commission, as applicable; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 88, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 693, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.093, eff. September 1, 2009.

Sec. 242.004. SIMULTANEOUS CARE FOR PREGNANT WOMEN AND OTHER WOMEN. This chapter does not prohibit an institution defined by Section 242.002(6)(B) from simultaneously caring for pregnant women and other women younger than 50 years of age.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.005. PERFORMANCE REPORTS. (a) The department shall prepare annually a full report of the operation and administration of the department's responsibilities under this chapter, including recommendations and suggestions considered advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

(c) The department shall submit the required report to the governor and the legislature not later than October 1 of each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.04, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 68, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 7, eff. June 17, 2011.

Sec. 242.006. DIRECTORY OF LICENSED INSTITUTIONS. (a) The department shall prepare and publish annually a directory of all licensed institutions.

(b) The directory must contain:

- (1) the name and address of the institution;
- (2) the name of the proprietor or sponsoring organization;

and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory available to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.007. CONSULTATION AND COOPERATION. (a) Whenever possible, the department shall use the services of and consult with

state and local agencies in carrying out its responsibility under this chapter.

(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.085, eff. Sept. 1, 1995.

Sec. 242.008. EMPLOYMENT OF PERSONNEL. The department may employ the personnel necessary to administer this chapter properly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.009. FEDERAL FUNDS. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.010. CHANGE OF ADMINISTRATORS. An institution that hires a new administrator or person designated as chief manager shall:

- (1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and
- (2) pay a \$20 administrative fee to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED. An institution may not prohibit a resident or employee from communicating in the

person's native language with another resident or employee for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The department shall:

(1) adopt rules to reduce the amount of paperwork an institution must complete and retain; and

(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, the contracting agency, and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.086, eff. Sept. 1, 1995.

Sec. 242.014. PROHIBITION OF REMUNERATION. (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents; and

(B) implementation of the policies and procedures of

the institution; and

(3) work at least 40 hours per week on administrative duties.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves

substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.02, eff. Sept. 1, 2003.

Sec. 242.018. COMPLIANCE WITH CHAPTER 260A. (a) An institution shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an institution, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(e), eff. September 28, 2011.

#### **SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS**

Sec. 242.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability

to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time before the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or other person operated an institution in this state or in another state or jurisdiction. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before the date on which the application is made.

(f) Information obtained under this section regarding an applicant's or license holder's financial condition is confidential and may not be disclosed to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.06, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 10, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 17, eff. September 1, 2011.

Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

(b) The department may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) Except as provided by Subsection (f), a license is renewable every three years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three years by the licensee.

(e) The report required for license renewal under Subsection (d)(3) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:

(1) the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any



rule or standard adopted under this chapter;

(2) an inspection, unless an inspection is not required as provided by Section 242.047;

(3) payment of the license fee; and

(4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(a), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(a), eff. September 28, 2011.

Sec. 242.0335. EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS. (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The department by rule shall establish specific criteria for designating a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules that the department has adopted under

this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 7.05, eff. June 15, 2001.

Sec. 242.0336. TEMPORARY CHANGE OF OWNERSHIP LICENSE. (a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c);  
and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and  
(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the department shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner of the Health and Human Services Commission shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

- (1) the proportion of ownership interest that is being transferred to another person;
- (2) the addition or removal of a stockholder, partner, owner, or other controlling person;
- (3) the reorganization of the license holder into a different type of business entity; and
- (4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

- (1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and
- (2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and

written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1), after the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The department shall establish criteria under which a desk review of the facility's compliance with applicable requirements may be substituted for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection, or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

Added by Acts 2001, 77th Leg., ch. 14, Sec. 1, eff. Sept. 1, 2001.  
Renumbered from Health & Safety Code Sec. 242.0335 by Acts 2003, 78th

Leg., ch. 1275, Sec. 2(91), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 2, eff. September 1, 2007.

Sec. 242.034. LICENSE FEES. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$375 plus:

(1) \$15 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed \$125 plus:

(1) \$5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(e) The applicable license fee must be paid with each application for a probationary license, an initial license, a renewal license, or a change of ownership license.

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 815, Sec. 1(b), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 1, eff. September 1, 2013.

Sec. 242.035. LICENSING CATEGORIES. (a) The department shall determine the rank of licensing categories.

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The board shall establish procedures and standards to accommodate an institution's operation under the lower category.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.036. GRADING. (a) The board may adopt, publish, and enforce minimum standards relating to the grading of an institution, other than an institution that provides maternity care, in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the board.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

- (1) the health, safety, or welfare of its residents;
- (2) resident funds;
- (3) the confidentiality of a resident's records;
- (4) the financial practices of the institution; or
- (5) the control of medication in the institution.

(e) The department shall cancel an institution's superior grade

if the institution:

(1) does not meet the criteria established for a superior grade; or

(2) violates a state or federal law, rule, or regulation described by Subsection (d).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the board shall adopt, publish, and enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those

persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare;

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

(h) The board shall adopt each rule adopted by the Texas Board of Health under Section 161.0051 as part of the rules and standards adopted under this chapter that apply to institutions serving residents who are elderly persons.

(i) The minimum standards adopted by the board under this section must require that each institution, as part of an existing



training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 583, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(54), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.09, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 259, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1031, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 2003.

Sec. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES. (a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 2, eff. September 1, 2005.

Sec. 242.038. REASONABLE TIME TO COMPLY. The board by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 2, eff. Sept. 1, 2001.

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The board shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to

establish the life safety requirements for an institution licensed under this chapter.

(b) The board shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The board may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

(f)(1) An advisory committee is created to propose rules for adoption by the department concerning the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under this chapter.

(2) The advisory committee shall be appointed by the board and composed as follows:

- (A) two municipal fire marshals;
- (B) four individuals representing the nursing home industry;
- (C) the commissioner of human services or a designee;
- (D) one building official from a municipality that has adopted the Uniform Building Code;
- (E) one building official from a municipality that has adopted the Standard Building Code;
- (F) one architect licensed under state law;

(G) one member of the Texas Board of Human Services;  
and

(H) one state Medicaid director or designee.

(3) The advisory committee shall serve without compensation or remuneration of any kind.

(g) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection. The rules must permit the department to set different fee amounts based on the size and type of institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 2, eff. September 1, 2009.

Sec. 242.0395. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The institution is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The institution shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. [1831](#)), Sec. 1.17, eff. September 1, 2009.

Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR

PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS. (a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for a three-year certification period.

(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.

(f) The executive commissioner by rule shall adopt a system under which an appropriate number of certifications issued by the department expire on staggered dates occurring in each three-year period. If the expiration date of a certification changes as a result of this subsection, the department shall prorate the certification fee relating to that certification as appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. [3196](#)), Sec. 2, eff. September 1, 2013.

Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY. (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.042. POSTING. (a) Each institution shall prominently

and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

- (1) the license issued under this chapter;
- (2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;
- (3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;
- (4) a concise summary of the most recent inspection report relating to the institution;
- (5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;
- (6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;
- (7) any notice or written statement required to be posted under Section 242.072(c);
- (8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign;
- (9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 260A.014 and 260A.015; and
- (10) a sign required to be posted under Section 260A.006(a).

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:

- (1) any information required to be included under Section

242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

(e) The department shall post detailed compliance information regarding each institution licensed by the department, including the information an institution is required to make accessible by Subsection (c), on the department's website. The department shall update the website once a month to provide the most current compliance information regarding each institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 102 (H.B. 1081), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(f), eff. September 28, 2011.

Sec. 242.043. INSPECTIONS. (a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each licensing period of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:

(1) the American Association of Retired Persons;

(2) the Texas Senior Citizen Association;

(3) the Texas Retired Federal Employees;

(4) the department's Certified Long Term Care Ombudsman; or

(5) another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department



shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(c), eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 1, eff. September 1, 2008.

Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violated.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility's family council.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of

violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 3, eff. September 1, 2007.

Sec. 242.045. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

- (1) the department;
- (2) the office of the attorney general;
- (3) a statewide organization for the elderly, including the American Association of Retired Persons, the Texas Senior Citizen Association, and the Texas Retired Federal Employees;
- (4) an ombudsman or representative of the Texas Department on Aging;
- (5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or
- (6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a third degree felony.

(d) A person convicted under this section is not eligible for state employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.11, eff. Sept. 1, 1997.

Sec. 242.046. OPEN HEARING. (a) The department shall hold an open hearing in a licensed institution, other than an institution that provides maternity care, if the department has taken a punitive action against the institution in the preceding 12 months or if the

department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:

- (1) the institution;
- (2) the designated closest living relative or legal guardian of each resident; and
- (3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 89, eff. Sept. 1, 1991.

Sec. 242.047. ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification by the department for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

- (1) the nursing home is accredited by the commission under the commission's long-term care standards;
- (2) the commission maintains an annual inspection or review program that, for each nursing home, meets the department's applicable minimum standards as confirmed by the board;

(3) the commission conducts an annual on-site inspection or review of the home;

(4) the nursing home submits to the department a copy of its annual accreditation review from the commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from the joint commission:

(i) instead of an inspection for license renewal purposes;

(ii) as satisfying the requirements for certification by the department for participation in the medical assistance program; or

(iii) as satisfying the requirements for certification by the department for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with the commission.

(c) The department and the commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

(d) Except as specifically provided by this section, this section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing home to obtain accreditation from the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2003, 78th Leg., ch. 198, Sec. 2.57(a), eff. Sept. 1, 2003.

Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 90, eff. Sept. 1, 1991.

Sec. 242.049. QUALITY IMPROVEMENT. (a) The department may evaluate data for quality of care in nursing homes.

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing homes and may provide information to nursing homes which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing homes in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing homes.

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of Chapter 552, Government Code. The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity

except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing homes. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing home to that nursing home, and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing home in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Subchapter E and the rules adopted under that subchapter shall continue to be subject to legal compulsion and be treated as public information under Subchapter E after the effective date of this Act, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

Added by Acts 1993, 73rd Leg., ch. 815, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0011, eff. Sept. 1, 2001.

Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES. (a)

If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 2.01, eff. June 15, 2001.

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy.

(b) The board by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1025, Sec. 2, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 242.050 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(92), eff. Sept. 1, 2003.

#### **SUBCHAPTER C. GENERAL ENFORCEMENT**

Sec. 242.061. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order

adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 452, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1094, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years and may extend throughout the person's lifetime or existence.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.03, eff.



September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 18, eff. September 1, 2011.

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing order is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 2, eff. Sept. 1, 1999.

Sec. 242.063. INJUNCTION. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident;

and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.58(a), (b), eff. Sept. 1, 2003.

Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 242.031.

(b) An offense under this section is punishable by a fine of not more than \$1,000 for the first offense and not more than \$500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$1,000 or more than \$20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

- (1) the seriousness of the violation;
- (2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;
- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation;
- (5) any misrepresentation made to the department or to another person regarding:
  - (A) the quality of services rendered or to be rendered to residents;
  - (B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or
  - (C) the identity of an owner or controlling person of the institution;
- (6) the culpability of the individual who committed the violation; and
- (7) any other matter that should, as a matter of justice or equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty

under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

- (1) with respect to a partnership other than a limited partnership, each partner of the partnership;
- (2) with respect to a corporation:
  - (A) an officer;
  - (B) a director;
  - (C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
  - (D) a controlling individual;
- (3) with respect to an individual:
  - (A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and
  - (B) each corporation or other business entity in which the individual or another affiliate of the individual is:
    - (i) an officer;
    - (ii) a director;
    - (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
    - (iv) a controlling individual;
- (4) with respect to a limited partnership:
  - (A) a general partner; and
  - (B) a limited partner who is a controlling individual;
- (5) with respect to a limited liability company:
  - (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and
  - (B) each owner who is a controlling individual; and
- (6) with respect to any other business entity, a

controlling individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 13, Sec. 1, eff. May 3, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.59, eff. Sept. 1, 2003.

Sec. 242.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed \$10,000 a day for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The board shall establish gradations of penalties in

accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

- (1) the gradations of penalties established under Subsection (d);
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
- (3) the history of previous violations;
- (4) deterrence of future violations; and
- (5) efforts to correct the violation.

(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L may not exceed \$1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

- (1) an applicant for a license under this chapter;
- (2) a license holder;
- (3) a partner, officer, director, or managing employee of a license holder or applicant; and
- (4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 93, Sec. 2, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 12, eff. September 1, 2007.

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES.

(a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be \$500 and a separate

penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 242.0665. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(7);

(3) to a violation of Section 260A.014 or 260A.015; or

(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.17, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 93, Sec. 3, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 13, eff.

September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(g),  
eff. September 28, 2011.

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a)  
The department may issue a preliminary report stating the facts on  
which it concludes that a violation of this chapter or a rule,  
standard, or order adopted or license issued under this chapter has  
occurred if it has:

(1) examined the possible violation and facts surrounding  
the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069  
and the amount of the penalty.

(c) The department shall give written notice of the report to  
the person charged with the violation not later than the 10th day  
after the date on which the report is issued. The notice must  
include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to  
correction under Section 242.0665 and, if the violation is subject to  
correction under that section, a statement of:

(A) the date on which the institution must file with  
the department a plan of correction to be approved by the department;  
and

(B) the date on which the plan of correction must be  
completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a  
hearing on the occurrence of the violation, the amount of the  
penalty, or both.

(d) Not later than the 20th day after the date on which the  
notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the  
department's report, including the recommended penalty;

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section  
242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section



242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or

(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall assess the administrative penalty recommended by the department.

(h) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.087, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the

administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.088, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative penalty, the commissioner shall give written notice to the person charged of:

(1) the findings;

(2) the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required; and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the commissioner under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the commissioner's order is received by the person and ending on the date the penalty is paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.089, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 2, eff. September 1, 2005.

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The

department may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.60(a), eff. Sept. 1, 2003.

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the commissioner may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 242.067(d).

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 619, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 8.01, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.002, eff. Sept. 1, 2003.

Sec. 242.072. OTHER REMEDIES. (a) If the commissioner finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

(1) violates Subsection (c); or

(2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 3, eff. Sept. 1, 1999.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997.

## Sec. 242.074. NOTIFICATION OF CHANGE IN FINANCIAL CONDITION.

(a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The department shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:

(1) the institution; or

(2) a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:

(1) an institution whose license has been revoked or suspended; or

(2) the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.

Added by Acts 1999, 76th Leg., ch. 452, Sec. 2.

**SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES**

Sec. 242.091. FINDINGS AND PURPOSE. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on

both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.092. DEFINITION. In this subchapter, "home" means a nursing or convalescent home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.093. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.094. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on



behalf of the state for the appointment of a trustee to operate a home if:

- (1) the home is operating without a license;
- (2) the department has suspended or revoked the home's license;
- (3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;
- (4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or
- (5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 583,  
Sec. 2

(e) Venue for an action brought under this section is in Travis County.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815,  
Sec. 3

(e) Venue for actions brought under this section shall be in Travis County.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

- (1) appointment of a trustee under this section; or
- (2) conduct with respect to which the appointment of trustee is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 583, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 815, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1094, Sec. 4, eff. Sept. 1, 1999.

Sec. 242.0945. QUALIFICATIONS OF TRUSTEES. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

(1) present at the home as required to perform the duties of a trustee; and

(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.

(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0946. NEPOTISM PROHIBITION. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.095. FEE; RELEASE OF FUNDS. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider

reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the Texas Department of Human Services at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid, Medicare, or insurance;
- (2) by another third party; or
- (3) for medical expenses borne by the resident.

(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 439, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 166, Sec. 1, eff. May 27, 2003.

Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

- (1) food;
- (2) medication;
- (3) sanitation services;
- (4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:

(1) the home has inadequate funds accessible to the trustee for the operation of the home;

(2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of \$10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.04, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 1, eff. Aug. 30, 1999.

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or  
(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of \$500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001;  
Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001.

Sec. 242.097. ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than \$10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The department shall set the fee for each nursing and convalescent home at \$1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than \$10,000,000 in the fund. The total fees assessed in a year may not exceed \$20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 723, Sec. 2, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 166, Sec. 2, eff. May 27, 2003.

Sec. 242.0975. ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than \$500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than \$500,000 in the assisted living facility trust fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.003, eff. Sept. 1, 2003.

Sec. 242.098. REIMBURSEMENT. (a) A home that receives emergency assistance funds under this subchapter shall reimburse the

department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the Texas Department of Human Services may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department. Venue for an action brought under this section is in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 35, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.64, eff. Sept. 1, 1999.

Sec. 242.099. APPLICABILITY OF OTHER LAW. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(13), eff. Sept. 1, 1997.

Sec. 242.100. NOTIFICATION OF CLOSING. (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.101. CRIMINAL PENALTY. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.102. INELIGIBILITY FOR LICENSE. (a) A license holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject to exclusion from eligibility for:

(1) issuance of an original license for a home for which the person has not previously held a license; or

(2) renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 3, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION**

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the



attending physician.

(c) Each resident has the right to choose a personal attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and

psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each resident be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING HOME RESIDENTS REQUIRING MENTAL HEALTH OR MENTAL RETARDATION SERVICES. (a) Each resident of a nursing home who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation.

(b) In identifying residents having a mental illness or mental retardation, the department shall use an identification process that is at least as effective as the mental health and mental retardation identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing home unless the nursing home is unable to provide adequate care for the resident.

(c) The department shall compile and provide to the Texas Department of Mental Health and Mental Retardation information regarding each resident identified as having a mental illness or mental retardation before the resident makes a transition from the nursing home to a community-based care setting.

(d) The Texas Department of Mental Health and Mental Retardation shall use the information provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and mental retardation services for residents making a transition from a nursing home to a community-based care setting;

(2) providing mental health or mental retardation services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or mental retardation authority or private provider for additional mental health or mental retardation services.

(e) This section does not authorize the department to decide for a resident of a nursing home that the resident will make a transition from the nursing home to a community-based care setting.

Added by Acts 2001, 77th Leg., ch. 423, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.159. AUTOMATED EXTERNAL DEFIBRILLATORS. (a) An institution shall have available for use at the institution an automated external defibrillator, as defined by Section 779.001, and shall comply with the training, use, and notification requirements of Chapter 779.

(b) An institution that does not have funds available for purposes of Subsection (a) may solicit gifts, grants, or donations to purchase or maintain an automated external defibrillator for use at the institution.

(c) The use of an automated external defibrillator must be consistent with a resident's advance directive executed or issued under Subchapter C, Chapter 166.

(d) Notwithstanding Section 74.151(b), Civil Practice and Remedies Code, Section 74.151(a), Civil Practice and Remedies Code, applies to administration of emergency care using an automated external defibrillator by an employee or volunteer at an institution.

(e) An institution shall employ at least one person who is trained in the proper use of an automated external defibrillator.

(e-1) An institution is not required to comply with Subsections (a) and (e) until September 1, 2014. This subsection expires January 1, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 257 (H.B. 392), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(b), eff. September 28, 2011.

#### **SUBCHAPTER G. RESPITE CARE**

Sec. 242.181. DEFINITIONS. In this subchapter:

(1) "Handicapped person" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.

(b) The board may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.186. SUSPENSION. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS**

Sec. 242.201. SCOPE OF SUBCHAPTER. This subchapter applies only to an institution that advertises, markets, or otherwise promotes that the institution provides services to residents with Alzheimer's disease and related disorders.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.202. DISCLOSURE REQUIRED. (a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

(1) an individual seeking placement as a resident with Alzheimer's disease or a related disorder;

(2) an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related disorders.

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

(1) the institution's philosophy of care;

(2) the preadmission, admission, and discharge process;

(3) resident assessment, care planning, and implementation of the care plan;

(4) staffing patterns, such as resident-to-staff ratios, and staff training;

(5) the physical environment of the institution;

(6) resident activities;

(7) program costs;

(8) systems for evaluation of the institution's programs for residents;

(9) family involvement in resident care; and

(10) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.

(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.203. VIOLATION. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.204. RULES. The board shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

#### **SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM**

Sec. 242.221. AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.

(c) The department and the Health and Human Services Commission shall work together to apply for all available federal funds to help pay for the automated system.

(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated system selected by the department.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The department shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.201 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.222. DATA USED BY SYSTEM. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.



Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.202 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.223. FREQUENCY OF DATA SUBMISSION. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

Added by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.224. ELECTRONIC CLAIMS FOR REIMBURSEMENT. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.203 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.225. DATE OF REIMBURSEMENT. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.204 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.226. RULES. The department shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.205 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

#### **SUBCHAPTER H-2. ARBITRATION OF CERTAIN DISPUTES**

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

- (1) renewal of a license under Section 242.033;
  - (2) suspension or revocation of a license under Section 242.061;
  - (3) assessment of a civil penalty under Section 242.065;
  - (4) assessment of a monetary penalty under Section 242.066;
- or
- (5) assessment of a penalty as described by Section 32.021(k), Human Resources Code.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.252. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental

pleading is served on the affected institution or its counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed \$500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may

represent the department in the arbitration.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

- (1) protect the interests of the department and the institution;
- (2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and
- (3) render an order consistent with this chapter and the rules adopted under this chapter.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not

later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

- (1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and
- (2) information relating to a proposed resolution of the dispute.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony

under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a

communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26),

eff. September 1, 2011.

Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26),



eff. September 1, 2011.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

- (1) revocation, denial, or suspension of an institution's license;
- (2) issuance of a closing order under Section 242.062; or
- (3) suspension of admissions under Section 242.072.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS. (a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26),

eff. September 1, 2011.

**Subchapter I, consisting of Secs. 242.301 to 242.322, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01.**

**For another Subchapter I, consisting of Secs. 242.301 to 242.327, added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01, see Sec. 242.301 et seq. post.**

**Text of subchapter effective until federal determination of failure to comply with federal regulations**

**SUBCHAPTER I. NURSING FACILITY ADMINISTRATION**

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(2) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(3) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT. (a) The board may adopt rules consistent with this subchapter.

(b) The department shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. (a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.

(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) The committee shall consist of:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(d) The committee shall advise the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

(e) Appointments to the committee shall be made without regard

to the race, color, disability, sex, religion, or national origin of the person appointed.

(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.304. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS. (a) An

applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.307. EXAMINATION. (a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more

than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS.

(a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the department of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.309. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.20, eff.

Sept. 1, 1999.

Sec. 242.310. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.21, eff. Sept. 1, 1999.

Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing



education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's information file shall be kept current and shall contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the department. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

(e) The board shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised at least quarterly of

complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.313. SANCTIONS. (a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules adopted by the executive commissioner before a sanction is imposed under this section.

(d) The executive commissioner by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed in accordance with the rules.

(e) The executive commissioner shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 2, eff. June 19, 2009.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the department may issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs. The department shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1,

1997.

Sec. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the

violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 3, eff. June 19, 2009.

Sec. 242.317. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.318. MONITORING OF LICENSE HOLDER. The department by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted

under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.319. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.321. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility



administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

**Subchapter I, consisting of Secs. 242.301 to 242.327, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.**

**For another Subchapter I, consisting of Secs. 242.301 to 242.322, added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, see Sec. 242.301 et seq. post.**

**Text of subchapter effective upon federal determination of failure to  
comply with federal regulations**

**SUBCHAPTER I. NURSING FACILITY ADMINISTRATION**

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS.

(a) The Texas Board of Nursing Facility Administrators is within the department.

(b) The board is composed of nine members appointed by the governor as follows:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the

person is appointed.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for

compensation on behalf of a profession related to the operation of the board may not serve on the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.304. GROUND FOR REMOVAL. It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;

(2) does not maintain during service on the board the qualifications required by Section 242.303 for appointment to the board;

(3) violates a prohibition established by Section 242.303;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES.

(a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT. The board is subject to Chapters 551 and 2001,

Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. (a) The board may adopt rules consistent with this subchapter.

(b) The board shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.309. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

- (1) the needs served by nursing facilities;
- (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
- (3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present

evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.312. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.313. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS.

(a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during

the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.314. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.311; or

(2) the provisional license holder passes the part of the



examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies any other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 242.315. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may

obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless

the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.318. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the

schedule for any sanction imposed in accordance with the rules.

(e) The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 4, eff. June 19, 2009.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violations; and
- (6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.321. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by

Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 5, eff. June 19, 2009.

Sec. 242.322. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.



Sec. 242.323. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.324. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.326. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility

administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

#### **SUBCHAPTER K. QUALITY OF CARE**

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique

medical and developmental needs.

(b) A resident of an institution has the right to reside and receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

- (1) each resident's individual assessment and comprehensive plan of care; and
- (2) the rules and standards relating to quality of care adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

- (1) admission of residents;
- (2) care of residents younger than 18 years of age;
- (3) an initial assessment and comprehensive plan of care for residents;
- (4) transfer or discharge of residents;
- (5) clinical records;
- (6) infection control at the institution;
- (7) rehabilitative services;
- (8) food services;
- (9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the department shall determine necessary to assure each resident a

diet that meets the daily nutritional and special dietary needs of each resident;

- (10) social services and activities;
- (11) prevention of pressure sores;
- (12) bladder and bowel retraining programs for residents;
- (13) prevention of complications from nasogastric or gastrostomy tube feedings;
- (14) relocation of residents within an institution;
- (15) postmortem procedures; and
- (16) appropriate use of chemical and physical restraints.

(b) The department may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 667 (S.B. 48), Sec. 1, eff. September 1, 2005.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

#### **SUBCHAPTER L. RIGHTS OF RESIDENTS**

Sec. 242.501. RESIDENT'S RIGHTS. (a) The department by rule shall adopt a statement of the rights of a resident. The statement

must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
- (2) to safe, decent, and clean conditions;
- (3) to be treated with courtesy, consideration, and respect;
- (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
- (5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
- (6) to privacy, including privacy during visits and telephone calls;
- (7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
- (8) to have information about the resident in the possession of the institution maintained as confidential;
- (9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
- (10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) to a written statement or admission agreement describing the services provided by the institution and the related charges;
- (12) to manage the resident's own finances or to delegate that responsibility to another person;
- (13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403;

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and

(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 919, Sec. 1, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1224, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.004, eff. Sept. 1, 2003.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and  
(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;  
(2) the next of kin or guardian of each resident; and  
(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action

or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.505. PRESCRIPTION OF PSYCHOACTIVE MEDICATION. (a) In this section:

(1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm to the resident; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

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

(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency; or

(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on



behalf of the resident is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person prescribing the medication or that person's designee provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable clinically significant side effects and risks associated with the medication; and

(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the

person authorized by law to consent on behalf of the resident.

Added by Acts 2001, 77th Leg., ch. 919, Sec. 2, eff. June 14, 2001.

#### **SUBCHAPTER M. COMPLAINT INSPECTIONS**

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION.

(a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

#### **SUBCHAPTER N. ADMINISTRATION OF MEDICATION**

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures.

(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.61, eff. Sept. 1, 2003.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of

sanitation, temperature, light, moisture, ventilation, segregation, and security.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.62, eff. Sept. 1, 2003.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

- (1) holds a license under state law that authorizes the person to administer medication; or
- (2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Redesignated from V.T.C.A, Health and Safety Code Sec. 242.151 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

- (1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;
- (2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;
- (3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;
- (4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or
- (5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 1, eff. June 19, 1990. Redesignated from Health and Safety Code Sec. 242.1511 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1,

1997; Acts 2003, 78th Leg., ch. 553, Sec. 2.011, eff. Feb. 1, 2004.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 69, eff.  
September 1, 2007.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The  
board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal,  
suspension, emergency suspension, and revocation of a permit to  
administer medication to a resident;

(2) curricula to train persons to administer medication to  
a resident;

(3) minimum standards for the approval of programs to train  
persons to administer medication to a resident and for rescinding  
approval; and

(4) the acts and practices that are allowed or prohibited  
to a permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Redesignated from V.T.C.A, Health and Safety Code Sec. 242.152 and  
amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1,  
1997.

Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a)  
An application for the approval of a training program must be made to  
the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets  
the minimum standards adopted under Section 242.608. The department  
may review the approval annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Redesignated from V.T.C.A, Health and Safety Code Sec. 242.153 and  
amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1,  
1997.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER  
MEDICATION. (a) To be issued or to have renewed a permit to  
administer medication, a person shall apply to the department on a

form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) Except as provided by Subsection (g), a permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The board by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more

may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 93, eff. Sept. 1, 1991. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.154 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 453, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1169, Sec. 15, eff. Sept. 1, 2003.

Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT.

(a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this



subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 16, eff. Sept. 1, 2003.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

- (1) \$25 for a combined permit application and examination fee; and
- (2) \$15 for a renewal permit application fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Redesignated from V.T.C.A, Health and Safety Code Sec. 242.155 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 17, eff. Sept. 1, 2003.

Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION.

(a) The board shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule of the board adopted under this subchapter. In addition, the board may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The board may place on probation a person whose permit is suspended. If a permit suspension is probated, the board may require the person:

- (1) to report regularly to the department on matters that are the basis of the probation;
  - (2) to limit practice to the areas prescribed by the board;
- or
- (3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those

areas that are the basis of the probation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.156 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 18, eff. Sept. 1, 2003.

Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.157 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY.

(a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
 Renumbered from V.T.C.A, Health and Safety Code Sec. 242.158 and  
 amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1,  
 1997.

**SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM**

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter;

or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The department by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic

monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Texas Department of Human Services;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the department considers advisable to include on the form.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The department by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested

persons to determine when a resident lacks the required capacity;  
and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the

required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The department may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal

representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment;  
and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.



Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 260A.002 and the criminal penalty for the failure to report abuse or neglect under Section 260A.012, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 260A.002 and of the criminal penalty for the failure to report abuse or neglect under Section 260A.012.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(h),  
eff. September 28, 2011.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

- (1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;
- (2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;
- (3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or
- (4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

- (1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;
- (2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;
- (3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or
- (4) violates another provision of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

**SUBCHAPTER S. FAMILY COUNCIL**

Sec. 242.901. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of Aging and Disability Services.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (3) "Family council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.902. FAMILY COUNCIL. A family council may:

- (1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and
- (2) promote educational programs and projects that will promote the health and happiness of residents.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.903. DUTIES OF INSTITUTION. (a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances.

(b) An institution may not:

- (1) prohibit the formation of a family council;
- (2) terminate an existing family council;
- (3) deny a family council the opportunity to accept help from an outside person;
- (4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:
  - (A) an employee of the institution during nonworking hours if the employee agrees; and
  - (B) a member of a nonprofit or government organization;
- (5) prevent or interfere with the family council receiving outside correspondence addressed to the council;
- (6) open family council mail; or

(7) wilfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) discriminating or retaliating against a family council participant; and

(B) wilfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident's family members in writing of:

(1) the family members' right to form a family council; or

(2) if a family council already exists, the council's:

(A) meeting time, date, and location; and

(B) contact person.

(d) An institution shall:

(1) include notice of a family council in a mailing that occurs at least semiannually;

(2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;

(3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;

(4) provide a designated staff person to act as liaison for a family council; and

(5) respond in writing to a written request by a family council within five working days.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.904. MEETINGS. (a) On written request, an institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.

(b) Institution employees or visitors may attend a family council meeting only at the council's invitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.905. VISITING. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.906. ADMINISTRATION; RULES. (a) The department shall administer this subchapter.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

#### **CHAPTER 243. AMBULATORY SURGICAL CENTERS**

##### **SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES**

Sec. 243.001. SHORT TITLE. This chapter may be cited as the Texas Ambulatory Surgical Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.002. DEFINITIONS. In this chapter:

(1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.003. LICENSE REQUIRED. (a) Except as provided by Section 243.004, a person may not establish or operate an ambulatory surgical center in this state without a license issued under this chapter.

(b) Each ambulatory surgical center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) an office or clinic of a licensed physician, dentist, or podiatrist;

(2) a licensed nursing home; or

(3) a licensed hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that there is at least one physician, dentist, or podiatrist on the staff of the center who is licensed by the appropriate state licensing board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee must be paid annually on renewal of the license.

(f) The department shall issue a renewal license to a center certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when the center:

(1) remits any annual license fee; and

(2) submits the inspection results or the inspection results report from the certification body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.006. INSPECTIONS. (a) The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this chapter.

(b) An ambulatory surgical center licensed by the department and certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) is subject to an on-site licensing inspection under this chapter once every three years while the center maintains the certification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1546, Sec. 1, eff. Sept. 1, 1999.

Sec. 243.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.008. AMBULATORY SURGICAL CENTER LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the ambulatory surgical center licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.009. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards applicable to an ambulatory surgical center and for:

- (1) the construction and design, including plumbing,



heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;

(2) the qualifications of the professional staff and other personnel;

(3) the equipment essential to the health and welfare of the patients;

(4) the sanitary and hygienic conditions within the center and its surroundings; and

(5) a quality assurance program for patient care.

(b) Standards set under this section may not exceed the minimum standards for certification of ambulatory surgical centers under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(c) This section does not authorize the board to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an ambulatory surgical center is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the

corrections to the department for approval.

(d) The department may suspend or revoke the license of an ambulatory surgical center that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 3, 4, eff. June 20, 2003.

Sec. 243.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1546, Sec. 2, eff. Sept. 1, 1999.

Sec. 243.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an ambulatory surgical center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an ambulatory surgical center without a license issued under this

chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 243.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 243.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$1,000 for each

violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of

public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty;

or

(2) find that a violation did not occur.

(l) The notice of the commissioner's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 243.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the commissioner of public health under Section 243.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner of public health by certified mail.

(c) If the commissioner of public health receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 243.017. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An ambulatory surgical center shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 7, eff. September 1, 2011.

#### CHAPTER 244. BIRTHING CENTERS

Sec. 244.001. SHORT TITLE. This chapter may be cited as the Texas Birthing Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.002. DEFINITIONS. In this chapter:

(1) "Birthing center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.003. LICENSE REQUIRED. (a) Except as provided by Section 244.004, a person may not establish or operate a birthing center in this state without an appropriate license issued under this chapter.

(b) Each birthing center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) a licensed hospital;

- (2) a licensed nursing home; or
- (3) a licensed ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted by the board under this chapter for the level of license for which the application is submitted.

(d) The department shall issue the appropriate license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee shall be paid annually on renewal of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.006. INSPECTIONS. (a) The department may inspect a birthing center at reasonable times as necessary to assure compliance with this chapter.

(b) If a birthing center's failure to comply with this chapter creates a serious threat to the health and safety of the public, the department may appoint a monitor for the center to ensure compliance with this chapter. The birthing center shall be liable for the cost of the monitor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1999.

Sec. 244.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.008. BIRTHING CENTER LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the birthing center licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.009. ADOPTION OF RULES. (a) The board shall adopt rules necessary to implement this chapter.

(b) The board shall adopt rules that establish different levels of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.010. MINIMUM STANDARDS. (a) For each level of license of a birthing center, the rules must contain minimum standards for:

- (1) the qualifications for professional and nonprofessional personnel;
- (2) the supervision of professional and nonprofessional personnel;
- (3) the provision and coordination of treatment and services;
- (4) the organizational structure, including the lines of authority and the delegation of responsibility;
- (5) the keeping of clinical records; and
- (6) any other aspect of the operation of a birthing center that the board considers necessary to protect the public.

(b) This section does not authorize the board to:

- (1) establish the qualifications of a licensed practitioner; or
- (2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.0105. COMPLAINTS. A person may file a complaint with the department against a birthing center licensed under this chapter. A person who files a false complaint may be prosecuted under the Penal Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for:

- (1) a violation of this chapter or a rule adopted under this chapter; or
- (2) a history of continuing noncompliance with this chapter or the rules adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a birthing center is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a birthing center that does not correct items that were in noncompliance or that does not comply with the applicable requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995;

Acts 1999, 76th Leg., ch. 1265, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 802, Sec. 5, 6, eff. June 20, 2003.

Sec. 244.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of the emergency suspension is sent to the license holder to determine if the emergency suspension is to take effect, to be modified, or to be rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a birthing center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (2) restrain or prevent the establishment or operation of a birthing center without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 244.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 244.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty;

or

(2) find that a violation did not occur.

(l) The notice of the commissioner's order under Subsection (k)

that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 244.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the commissioner of public health under Section 244.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner of public health by certified mail.

(c) If the commissioner of public health receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving

that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.

#### **CHAPTER 245. ABORTION FACILITIES**

Sec. 245.001. SHORT TITLE. This chapter may be cited as the Texas Abortion Facility Reporting and Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.002. DEFINITIONS. In this chapter:

(1) "Abortion" means an act or procedure performed after pregnancy has been medically verified and with the intent to cause

the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

(2) "Abortion facility" means a place where abortions are performed.

(3) "Board" means the Texas Board of Health.

(4) "Department" means the Texas Department of Health.

(5) "Patient" means a female on whom an abortion is performed, but does not include a fetus.

(6) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.003. LICENSE REQUIRED. (a) Except as provided by Section 245.004, a person may not establish or operate an abortion facility in this state without an appropriate license issued under this chapter.

(b) Each abortion facility must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2003, 78th Leg., Ch. 198, Sec. 2.63 (a).

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used for the purpose of performing more than 50 abortions in any 12-month period.

(b) In computing the number of abortions performed in the office of a physician under Subsection (a)(2), an abortion performed in accordance with Section 245.016 is not included.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001;



Acts 2003, 78th Leg., ch. 198, Sec. 2.63(a), eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., Ch. 999, Sec. 2  
Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The  
following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital  
Licensing Law);

(2) the office of a physician licensed under Subtitle B,  
Title 3, Occupations Code, unless the office is used substantially  
for the purpose of performing abortions; or

(3) an ambulatory surgical center licensed under Chapter  
243.

(b) For purposes of this section, a facility is used  
substantially for the purpose of performing abortions if the  
facility:

(1) is a provider for performing:

(A) at least 10 abortion procedures during any month;

or

(B) at least 100 abortion procedures in a year;

(2) operates less than 20 days in a month and the facility,  
in any month, is a provider for performing a number of abortion  
procedures that would be equivalent to at least 10 procedures in a  
month if the facility were operating at least 20 days in a month;

(3) holds itself out to the public as an abortion provider  
by advertising by any public means, including advertising placed in a  
newspaper, telephone directory, magazine, or electronic medium, that  
the facility performs abortions; or

(4) applies for an abortion facility license.

(c) For purposes of this section, an abortion facility is  
operating if the facility is open for any period of time during a day  
and has on site at the facility or on call a physician available to  
perform abortions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended  
by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999;  
Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001;  
Acts 2003, 78th Leg., ch. 999, Sec. 2, eff. Sept. 1, 2003.

Sec. 245.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an abortion facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the Texas State Board of Medical Examiners.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the abortion facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual report, including the report required under Section 245.011.

(f) Information regarding the licensing status of an abortion facility is an open record for the purposes of Chapter 552, Government Code, and shall be made available by the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 856, Sec. 2, eff. Sept. 1, 1995.

Sec. 245.006. INSPECTIONS. (a) The department shall inspect an abortion facility at random, unannounced, and reasonable times as necessary to ensure compliance with this chapter and Subchapter B, Chapter 171.

(b) The department shall inspect an abortion facility before renewing the facility's license under Section 245.005(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 8, eff. September 1, 2011.

Sec. 245.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 999, Sec. 3, eff. Sept. 1, 2003.

Sec. 245.008. ABORTION FACILITY LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the abortion facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.009. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171. On and after September 1, 2014, the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under Section 243.010 for ambulatory surgical centers.

(b) Only a physician as defined by Subtitle B, Title 3, Occupations Code, may perform an abortion.

(c) Repealed by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.

(d) This section does not authorize the board to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1997; Acts

2001, 77th Leg., ch. 1420, Sec. 14.789, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 4, eff. October 29, 2013.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.

Sec. 245.0105. UNIQUE IDENTIFYING NUMBER; DISCLOSURE IN ADVERTISEMENT. (a) The department shall assign to each abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) An abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility.

(c) In this section, "abortion advertisement" means:

(1) any communication that advertises the availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1997.

Sec. 245.011. REPORTING REQUIREMENTS; CRIMINAL PENALTY. (a) Each abortion facility must submit an annual report to the department on each abortion that is performed at the abortion facility. The report must be submitted on a form provided by the department.

(b) The report may not identify by any means the physician performing the abortion or the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and

state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient; and

(9) the number of previous induced abortions of the patient.

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;

(2) with the consent of each person, patient, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(e) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1120, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 5, eff. October 29, 2013.

Sec. 245.012. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF

LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the abortion facility adequate notice of the action and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the 14th day after the effective date of the suspension or revocation.

(d) If the department finds that an abortion facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not in any way involve the health and safety of the public or an individual, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(e) The department may suspend or revoke the license of an abortion facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 802, Sec. 7, 8, eff. June 20, 2003.

Sec. 245.013. INJUNCTION. (a) The department may petition a

district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an abortion facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (2) restrain or prevent the establishment or operation of an abortion facility without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the abortion facility is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 245.003(a).

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.02, eff. Sept. 1, 1999.

Sec. 245.015. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT. This chapter does not remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed abortion facility if, at the commencement of the abortion, the physician reasonably believes that the abortion is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.03, eff. Sept. 1, 1999.

Sec. 245.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.018. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;



(2) a statement of the amount of the proposed penalty, based on the factors listed in Section 245.017(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering the person to pay the recommended penalty.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.019. HEARING; ORDER. (a) If the person requests a hearing, the commissioner of public health or the commissioner's designee shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.020. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The commissioner of public health or the commissioner's designee shall give notice of the commissioner's order under Section 245.019(c) to the person alleged to have

committed the violation. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the commissioner's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty in full;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The

person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the commissioner of public health:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.021. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.022. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a board order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 245.013 or 245.015 or an action to enforce an administrative penalty assessed under Section 245.017 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.023. PUBLIC INFORMATION; TOLL-FREE TELEPHONE NUMBER.

(a) The department on request shall make the following information available to the public:

- (1) the status of the license of any abortion facility;
- (2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and
- (3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant

to services provided at the facility.

(b) Subsection (a) does not require the department to provide information that is not in the possession of the department. The Texas State Board of Medical Examiners shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

(c) The department shall maintain a toll-free telephone number that a person may call to obtain the information described by Subsection (a).

(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available in English and Spanish and be in substantially the following form:

"(toll-free telephone number)

You have a right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

(1) Whether this abortion facility is licensed by the Texas Department of Health.

(2) The date of the last inspection of this facility by the Texas Department of Health and any violations of law or rules discovered during that inspection that may pose a health risk to you.

(3) Any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility."

(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 4, eff. Sept. 1, 1997.  
Renumbered from Sec. 245.017 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(65), eff. Sept. 1, 1999.

Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING

SONOGRAM BEFORE ABORTION. An abortion facility shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 9, eff. September 1, 2011.

## CHAPTER 246. CONTINUING CARE FACILITIES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 246.001. SHORT TITLE. This chapter may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Commissioner" means the commissioner of the State Board of Insurance.

(3) "Continuing care" means the furnishing of a living unit, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether the services and the living unit are provided at the same location:

(A) to an individual who is not related by consanguinity or affinity, as determined under Chapter 573, Government Code, to the person furnishing the care; and

(B) under a continuing care contract.

(4) "Continuing care contract" means an agreement that requires the payment of an entrance fee by or on behalf of a resident in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the resident; or

(B) more than one year.

(5) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding three months' rent, made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual as a resident. The term does not include a deposit made under a reservation agreement.

(6) "Facility" means a place in which a person provides continuing care to an individual.

(7) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals.

(8) "Long-term nursing care" means nursing care provided for a period longer than 365 consecutive days.

(9) "Person" means an individual, corporation, association, or partnership, and includes a fraternal or benevolent order or society.

(10) "Provider" means a person who undertakes to provide continuing care in a facility.

(11) "Reservation agreement" means an agreement that requires the payment of a deposit to reserve a living unit for a prospective resident.

(12) "Resident" means an individual entitled to receive continuing care in a facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 95, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 31, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 246.003. BOARD POWERS AND DUTIES. (a) The board shall regulate providers as provided by this chapter.

(b) The board may adopt rules and take other action as necessary to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.004. RIGHTS OF RESIDENTS. A resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care is entitled to all statutory rights provided to a nursing home, personal care, or custodial care resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES. A facility

regulated under this chapter is licensed for purposes of Section 151.314, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.006. QUALITY OF CARE. The commissioner may not regulate or in any manner inquire into the quality of care provided in a facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.007. REDUCTION OF FEES. The commissioner shall reduce the annual filing fees under this chapter if the cumulative amount of the fees exceeds the actual cost of regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. CERTIFICATE OF AUTHORITY**

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. Unless a provider holds a certificate of authority issued under this subchapter, the provider may not:

- (1) acquire a facility;
- (2) enter into a continuing care contract; or
- (3) enter into a reservation agreement unless the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 2, eff. Sept. 1, 1993.

Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall adopt rules stating the information an applicant for a certificate of authority must submit.

(b) On receiving an application for a certificate of authority, the commissioner shall conduct a hearing on the application.

(c) The commissioner shall grant an application for a certificate of authority if the commissioner finds that:



- (1) the applicant or the facility is financially sound;
  - (2) the competence, experience, and integrity of the applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and
  - (3) the applicant is capable of complying with this chapter.
- (d) The commissioner shall issue an order approving or disapproving an application not later than the 180th day after the date on which the application is filed.
- (e) The commissioner may limit issuance of certificates of authority to incorporated entities only.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES. (a) The commissioner shall issue a certificate of authority for a facility that:

- (1) was occupied by at least one resident on September 1, 1987;
- (2) was under construction on September 1, 1987; or
- (3) incurred substantial financial obligations before September 1, 1987, related to the development of the facility.

(b) A certificate of authority issued under this section may be suspended or revoked as any other certificate.

(c) This section prevails over Section 246.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A certificate of authority may not be transferred without the prior approval of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 96, eff. Sept. 1, 1991.

Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner may suspend or revoke a provider's certificate of authority if the provider:

- (1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;
- (2) draws on its loan reserve fund escrow in an amount greater than provided for by Section 246.078; or
- (3) intentionally violates this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 97, eff. Sept. 1, 1991.

Sec. 246.026. MANAGEMENT BY OTHERS. A holder of a certificate of authority may not contract for management of the facility unless the commissioner is notified of the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.027. CERTIFICATE OF AUTHORITY FEES. (a) Except as provided by Subsection (b), a facility that files an application for a certificate of authority must pay to the commissioner a fee of \$10,000.

(b) A facility that files an application for a certificate of authority issued under Section 246.023 must pay to the commissioner:

- (1) a fee of \$500; and
- (2) a fee of \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS**

Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS. (a) A provider shall file with the board a current disclosure statement that meets the requirements of this subchapter and shall file copies of the agreements establishing the escrows under Subchapter D or a verified statement explaining that an escrow is not required before the provider:

- (1) contracts to provide continuing care in a facility located or to be located in this state;
- (2) extends the term of an existing continuing care

contract in a facility that is located or to be located in this state and that requires or allows an entrance fee from any person, regardless of whether the extended contract requires an entrance fee; or

(3) including a person acting on the provider's behalf, solicits for an individual who is a resident of this state a continuing care contract in this state.

(b) A contract is solicited in this state if, during the 12-month period preceding the date on which a continuing care contract for a facility is signed or accepted by either party, information concerning the facility or the availability of a continuing care contract for the facility is given:

(1) by personal, telephone, mail, or other communication directed to and received by a person at a location in this state; or

(2) in a paid advertisement published or broadcast from within this state, other than in a publication in which more than two-thirds of the circulation is outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.042. DELIVERY OF DISCLOSURE STATEMENT. (a) A provider who has not been issued a certificate of authority under Subchapter B must deliver a disclosure statement to any person from whom the provider accepts a deposit in connection with a reservation agreement before the provider accepts the deposit.

(b) A provider who has been issued a certificate of authority under Subchapter B must deliver a disclosure statement to a person with whom a continuing care contract is to be made before the earlier of:

(1) the execution of the continuing care contract; or

(2) the transfer of any entrance fee or nonrefundable deposit to the provider by or on behalf of the person.

(c) The most recently filed disclosure statement is the only statement that:

(1) is current for purposes of this chapter; and

(2) may be delivered under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 3, eff. Sept. 1, 1993.

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must state:

(1) the date of the statement in a prominent location and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;

(2) that if the provider has not been issued a certificate of authority under Subchapter B, this chapter requires the delivery of a disclosure statement to a prospective resident before the payment of any deposit to reserve a living unit;

(3) that this chapter requires the delivery of a disclosure statement to a contracting party before the execution of a continuing care contract or the payment of an entrance fee or nonrefundable deposit; and

(4) that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 98, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 4, eff. Sept. 1, 1993.

Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER. (a) The disclosure statement must include the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity. If the provider is not an individual, the statement must include:

(1) the name and business address of each officer, director, trustee, and managing or general partner; and

(2) the name and business address of each person who has at least a 10 percent interest in the provider and a description of the person's interest in or occupation with the provider.

(b) The provider may include in the disclosure statement any other material information concerning the facility or the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.045. CONTENTS OF DISCLOSURE STATEMENT: THIRD PARTY MANAGEMENT. If a person, other than an individual directly employed by the provider, is to be the day-to-day manager of a facility, the

disclosure statement must include:

- (1) a description of the person's business experience, if any, in the operation or management of a similar facility;
- (2) the name and address of any professional service, firm, association, trust, partnership, or corporation that:
  - (A) has in the person, or in which the person has, at least a 10 percent interest; and
  - (B) proposes to provide goods, leases, or services to the facility or to the residents of the facility, of an aggregate value of at least \$500 in a year;
- (3) a description of any goods, leases, or services under Subdivision (2), and a statement of their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot be estimated; and
- (4) a description of any matter in which the person:
  - (A) has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;
  - (B) is subject to an injunction or restrictive order of a court of record; or
  - (C) has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to a business activity in a health care field, including an action affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this chapter or a similar statute in another state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.046. CONTENTS OF DISCLOSURE STATEMENT: AFFILIATION WITH NONPROFIT ORGANIZATION. The disclosure statement must state whether the provider is affiliated with a religious, charitable, or other nonprofit organization, and if so, the statement must:

- (1) describe the extent of the affiliation;
- (2) explain the extent to which the organization is responsible for the financial and contractual obligations of the

provider; and

(3) cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.047. CONTENTS OF DISCLOSURE STATEMENT: PHYSICAL PROPERTY. (a) The disclosure statement must provide the location and a description of the proposed or existing physical property of the facility.

(b) If the physical property of the facility is proposed, the disclosure statement must state:

- (1) the estimated completion date;
- (2) whether construction has begun; and
- (3) any contingencies under which construction may be deferred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS AND FEES. The disclosure statement must describe:

- (1) the services provided at the facility under a continuing care contract, including:
  - (A) the extent to which medical care is furnished; and
  - (B) those services that are included for specified basic fees for continuing care and those services that are made available at extra charge;
- (2) all fees required of residents, including the entrance fee and any periodic charges;
- (3) the conditions under which a continuing care contract at the facility may be canceled by the provider or the resident;
- (4) any conditions under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or the resident, or by the death of the resident before or during the occupancy of a living unit; and
- (5) the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on those adjustments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES. The disclosure statement must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. (a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract at a facility, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been in existence.

(b) Financial statements required by Subsection (a)(2) must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant, who shall state in the audit report whether the financial statements were prepared in accordance with those principles.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 99, eff. Sept. 1, 1991.

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

- (1) anticipated earning on any cash reserves;
- (2) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;
- (3) an estimate of gifts or bequests to be relied on to meet operating expenses;
- (4) a projection of estimated income from fees and charges, excluding entrance fees, that:
  - (A) states individual rates anticipated to be charged; and
  - (B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;
- (5) a projection of the facility's operating expenses, including:
  - (A) a description of the assumptions used in computing the expenses; and
  - (B) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or



additions; and

(6) an estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 100, eff. Sept. 1, 1991.

Sec. 246.052. CONTENTS OF DISCLOSURE STATEMENT: ANTICIPATED SOURCE AND APPLICATION OF FUNDS. If a facility has not begun operation, the disclosure statement must include a statement of the anticipated source and application of the funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;

(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a continuing care contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the standard contract form used by a provider must be attached as an exhibit to each disclosure statement.

(b) The standard contract form must specify the refund provisions of Sections 246.056 and 246.057.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 101, eff. Sept. 1, 1991.

Sec. 246.054. ANNUAL DISCLOSURE STATEMENT REVISION. (a) A provider shall file a revised disclosure statement with the board not later than the 120th day after the date on which the provider's fiscal year ends.

(b) The revised disclosure statement must revise, as of the end of the provider's fiscal year, the information required by this subchapter.

(c) The revised disclosure statement must describe any material differences between:

(1) the estimated income statements filed under Section 246.052 as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and

(2) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(d) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the provider's opinion, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement.

(e) The commissioner shall review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES. A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE. (a) A person who executes a continuing care contract with a provider may rescind the contract at any time before the later of midnight of the

seventh day, or a later day if specified in the contract:

(1) after the date on which the continuing care contract is executed; or

(2) after the date on which the person receives a disclosure statement that meets the requirements of this subchapter.

(b) A resident who executes a continuing care contract may not be required to move into the facility before the expiration of the period during which the contract may be rescinded.

(c) If a continuing care contract is rescinded under this section, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must include the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"You may cancel this contract at any time prior to midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit."

(e) Each continuing contract also must include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"This document, if executed, constitutes a legal and binding contract between you and \_\_\_\_\_. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 102, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 5, eff. Sept. 1, 1993.

Sec. 246.057. CANCELLATION OF CONTRACT: DEATH OR INCAPACITY BEFORE OCCUPANCY. (a) A continuing care contract is canceled if the resident:

(1) dies before occupying a living unit in the facility;

or

(2) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(b) If a continuing care contract is canceled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(1) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and

(2) a reasonable service charge, if set out in the contract, that may not exceed the greater of \$1,000 or two percent of the entrance fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 6, eff. Sept. 1, 1993.

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files a disclosure statement under Section 246.041 or 246.054 shall pay to the commissioner:

(1) a filing fee of \$500; and

(2) a fee of not more than \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 103, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. ENTRANCE FEE AND RESERVE FUND ESCROW ACCOUNTS**

Sec. 246.071. ENTRANCE FEE ESCROW ACCOUNT; ESCROW AGENT. (a) Before a provider may accept the payment of a deposit made under a reservation agreement or any portion of an entrance fee, the provider must establish an entrance fee escrow account with a bank or trust

company, as escrow agent, that is located in this state.

(b) The provider shall deposit with the escrow agent any deposit or any portion of an entrance fee received by the provider not later than 72 hours after the provider receives the deposit or fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 7, eff. Sept. 1, 1993.

Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF ENTRANCE FEE. (a) On a written request from or on behalf of the provider or a prospective resident, the escrow agent shall return the amount on deposit to the person who paid the deposit or shall maintain the deposit as an entrance fee in the entrance fee escrow account.

(b) Unless the escrow agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under Section 246.056, the agent shall release the fee to the provider or place the fee in a loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 104, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 8, eff. Sept. 1, 1993.

Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts with those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each continuing care contract;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal

to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility; and:

(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the

description in the disclosure statement, including any installation charges; or

(B) if construction or purchase of the facility has been substantially completed:

(i) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and

(ii) if the entrance fee applies to a living unit that has been previously occupied, the living unit is available for occupancy by the new resident.

(b) Before the date on which the loan reserve fund escrow required under Section 246.077 is first established, the aggregate amount of entrance fees that may be released to the provider under this section may not exceed an amount equal to the aggregate amount of entrance fees received or receivable by the provider under binding continuing care contracts minus the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 105, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 9, eff. Sept. 1, 1993.

Sec. 246.0735. PHASE-IN FACILITIES. The commissioner may create requirements for escrow release different from those under Section 246.073 for facilities that obtain a certificate of authority issued under this subchapter before the commencement of facility construction. A facility that meets the commissioner's requirements under this section is not required to satisfy Section 246.073.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. [2392](#)), Sec. 1, eff. June 15, 2007.

Sec. 246.0736. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility, the commissioner shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the commissioner may require the provider to satisfy the requirements of Section 246.073 before the commissioner authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

(c) The commissioner shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. 2392), Sec. 1, eff. June 15, 2007.

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent shall return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under Section 246.077 within:

(1) 36 months after the date on which any portion of the entrance fee is received by the provider; or

(2) a longer time specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 106, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 10, eff. Sept. 1, 1993.

Sec. 246.075. ESCROW OF APPLICATION FEE NOT REQUIRED. This subchapter does not require the escrow of any nonrefundable portion of a deposit or entrance fee that:

(1) does not exceed an amount equal to two percent of the entrance fee; and

(2) is clearly designated as nonrefundable in the continuing care contract or reservation agreement.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 11, eff. Sept. 1, 1993.

Sec. 246.076. INTEREST ACCRUED ON ENTRANCE FEE FUNDS. Unless otherwise provided in a continuing care contract, interest that accrues on funds held in an entrance fee escrow account is the property of the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 12, eff. Sept. 1, 1993.

Sec. 246.077. RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a reserve fund equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The requirements of this section may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations if the total amount equals or exceeds the amount required by this subsection.

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing home.

(c) The provider shall maintain the loan reserve fund escrow in an account that is fully covered by federal deposit insurance and is separate from the provider's business account or in other accounts or investments approved by the commissioner. The funds in the reserve fund escrow account may be invested, with earnings payable to the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 107, eff. Sept. 1, 1991.

Sec. 246.078. RELEASE OF RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the loan reserve fund required by Section 246.077 if the provider

requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds from the loan reserve fund escrow under this section more than once during a calendar year. A provider at any time may apply to the commissioner for the withdrawal of all or part of the loan reserve escrow funds. The provider may withdraw the funds on the approval of the withdrawal by the commissioner. The application must be made and the approval given as provided by rule.

(d) The provider must repay to the loan reserve fund escrow account the amount released to the provider under Subsection (a) or (c) not later than 18 months after the date the amount is released. The commissioner may place the provider or facility under supervision under Section 246.091 or take any other appropriate action as provided by law if the provider does not repay the loan reserve fund escrow account within the required period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 108, eff. Sept. 1, 1991.

Sec. 246.079. TRANSITION. (a) A provider who operates a facility that existed on September 1, 1987, must comply with the filing requirements imposed under Section 246.041 and the escrow requirements imposed under Sections 246.077 and 246.078 not later than September 1, 1990.

(b) The commissioner may extend the time for compliance under this section for a reasonable period if the commissioner determines that the provider is unable to comply with this section after making a good faith effort to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 109, eff. Sept. 1, 1991.

Sec. 246.080. APPLICABILITY. Sections 246.071 through 246.076 do not apply to a facility that on September 1, 1987, was completed and occupied by at least one person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 110, eff. Sept. 1, 1991.

**SUBCHAPTER E. SUPERVISION, REHABILITATION, AND LIQUIDATION**

Sec. 246.091. SUPERVISION BY COMMISSIONER. (a) The commissioner may place a provider or facility under supervision if:

- (1) the provider draws on the provider's entrance fee escrow in an amount greater than permitted by Section 246.073;
- (2) the provider draws on the provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Section 246.078;
- (3) the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or
- (4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) The commissioner appoints the supervisor.

(c) The commissioner may provide that the provider may not, during the supervision period and without the prior approval of the commissioner or the supervisor:

- (1) dispose of, convey, or encumber its assets;
- (2) withdraw its bank accounts;
- (3) lend its funds;
- (4) invest its funds;
- (5) transfer its property;
- (6) incur a debt, obligation, or liability; or
- (7) merge or consolidate with another facility.

(d) The commissioner shall terminate the supervision and restore to a provider the authority to manage the affairs of the facility if the commissioner determines that the facility is capable of meeting its financial obligations.

(e) The facility or provider shall pay the costs of a supervisor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 111, eff. Sept. 1, 1991.

Sec. 246.092. APPLICATION FOR COURT ORDER FOR REHABILITATION OR LIQUIDATION. (a) The commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if the commissioner elects not to place the facility under supervision and:

(1) the provider draws from the provider's loan reserve fund escrow an amount greater than permitted by Section 246.078;

(2) the provider does not repay the loan reserve fund escrow as required by Section 246.078;

(3) the board determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) In connection with an application for an order to rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted with the provider for continuing care at the facility may be best served, and may order that the proceeds of a lien imposed under Section 246.111 may be used in full or partial payment of entrance fees to other facilities on behalf of the residents of the facility being liquidated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 112, eff. Sept. 1, 1991.

Sec. 246.093. ORDER TO REHABILITATE. An order to rehabilitate a facility must direct the trustee to:

(1) take possession of the provider's property in order to conduct the business, including employing any managers or agents the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.094. ORDER TO LIQUIDATE. (a) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court that ordered the rehabilitation for an order of liquidation.

(b) A court that has jurisdiction may issue an order to liquidate a facility on application of the board, regardless of whether an order to rehabilitate the facility exists. If the court issues an order to liquidate, the court shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.

(c) A person may not contract for continuing care at a facility after an order to liquidate that facility has been entered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.095. BOND. A court may refuse to make or may vacate an order to rehabilitate under this subchapter if the provider posts a bond that is:

(1) in an amount determined by the court to be equal to the reserve funding needed to fulfill the provider's obligations under its continuing care contracts at the facility;

(2) issued by a recognized surety authorized to do business in this state; and

(3) executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider or other damages if the provider is unable to fulfill its continuing care contracts at the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.096. TERMINATION OF REHABILITATION. (a) A court may terminate a rehabilitation and order return of a facility and its assets and affairs to the management of the provider if the court, on petition of the trustee or the provider or on its own motion, finds that:

(1) the objectives of the order to rehabilitate the facility have been accomplished; and

(2) the facility can be returned to the provider's management without further jeopardy to the residents, creditors, or owners of the facility or the public.

(b) A court may enter an order under this section after:

(1) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and

(2) a report on the facility's financial condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.097. PAYMENT OF TRUSTEE. The reasonable costs, expenses, and fees of the trustee are payable from the assets of the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. ENFORCEMENT**

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility. The lien covers the real and personal property of the provider located at the facility. The provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility. The notice must contain the name of the provider, the legal description of each facility of the provider, and a statement that the facility is subject to this chapter and the lien provided by this section. The provider shall file for record the notice in the real property records of each county where the provider has a facility on or before the later of January 1, 1994, or the date of the execution of the first continuing care contract relating to the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

(1) the facility is financially sound; and

(2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

(1) construct, acquire, replace, or improve the facility;  
or

(2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 13, 15, eff. Sept. 1, 1993.

Sec. 246.112. INVESTIGATIONS. The commissioner may conduct an examination or investigation as necessary to:

(1) determine whether a person has violated or is about to violate this chapter;

(2) aid in the enforcement of this chapter;

(3) determine the financial solvency of a facility; or

(4) verify a statement contained in a disclosure statement filed or delivered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.113. PRODUCTION OF EVIDENCE. (a) In an investigation or proceeding under this chapter, the board may:

(1) require or allow a person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated;

(2) administer oaths and affirmations;

(3) subpoena witnesses;

(4) compel attendance;

(5) take evidence; and

(6) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant to the inquiry.

(b) The board may bring suit in district court to enforce a

subpoena if the person to whom a subpoena is directed fails to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.114. ACTUARIAL REVIEW. (a) This section applies only to a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities.

(b) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1982, and before September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of completion of the initial actuarial review.

(c) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of the filing of the initial actuarial review.

(d) The commissioner may require an actuarial review of a facility before the end of the five-year interval in which the facility would otherwise be required to file an actuarial review if, in the opinion of the commissioner, the facility exhibits conditions of financial instability warranting an earlier review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 113, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 14, eff. Sept. 1, 1993.

Sec. 246.115. CEASE AND DESIST ORDERS; INJUNCTIONS. (a) The board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the board determines, after a complaint or by other means, that the act or practice violates this chapter or an order made under this chapter.

(b) The action may be brought in the district court of a county in which:

- (1) the defendant resides;
- (2) the defendant has done business;
- (3) the principal place of business of the defendant is



located; or

(4) the transaction occurred.

(c) The court may grant an injunction or restraining order on a proper showing. If the court grants an injunction or restraining order, the court shall issue it without bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.116. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.117. CIVIL LIABILITY. (a) A provider who makes a continuing care contract without complying with the disclosure statement requirement under Subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person with whom the continuing care contract is made for:

(1) actual damages;

(2) repayment of all fees paid to the provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;

(3) interest at the legal rate for judgments;

(4) court costs; and

(5) reasonable attorney's fees.

(b) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid to the provider, facility, or person violating this chapter and reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer and:

(1) the offer states the provisions of this section; and  
 (2) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.

(d) A person must bring suit under this section not later than three years after:

(1) the date on which the continuing care contract was entered into; or

(2) the violation, misstatement, or omission is discovered or reasonably should have been discovered.

(e) Except as expressly provided by this chapter, civil liability does not arise in favor of a private party by implication from or as a result of the violation of this chapter or a rule or order adopted under this chapter.

(f) This chapter does not limit a liability that would exist under any other statute or common law if this chapter were not in effect.

(g) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 247. ASSISTED LIVING FACILITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Assisted Living Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) resident independence and self-determination;

- (2) humane treatment;
- (3) conservative intervention;
- (4) access to care;
- (5) continuity of care;
- (6) coordination of services;
- (7) safe surroundings;
- (8) professionalism of service providers;
- (9) participation in useful studies; and
- (10) quality of life.

(b) The department shall protect residents of assisted living facilities by:

- (1) adopting rules relating to quality of care and quality of life;
- (2) adopting rules relating to the assessment of the condition and service needs of each resident;
- (3) promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;
- (4) regulating the construction, maintenance, and operation of assisted living facilities;
- (5) strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;
- (6) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
- (7) providing a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and
- (8) providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.002. DEFINITIONS. In this chapter:

- (1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication;

(C) may provide assistance with or supervision of the administration of medication; and

(D) may provide skilled nursing services for the following limited purposes:

(i) coordination of resident care with outside home and community support services agencies and other health care professionals;

(ii) provision or delegation of personal care services and medication administration as described by this subdivision;

(iii) assessment of residents to determine the care required; and

(iv) for periods of time as established by department rule, delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency.

(2) "Board" means the executive commissioner of the Health and Human Services Commission.

(3) "Controlling person" means a person who controls an assisted living facility or other person as described by Section 247.005.

(4) "Department" means the Department of Aging and Disability Services.

(5) "Personal care services" means:

(A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or

(B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(6) "Qualified religious society" means a church, synagogue, or other organization or association that is organized

primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable compensation for services or reimbursement of expenses.

(7) "Commissioner" means the commissioner of the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 608, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.092, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(a), eff. September 28, 2011.

Sec. 247.0025. IMMEDIATE THREAT OF HARM. For purposes of this chapter, there is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 2, eff. Sept. 1, 2001.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsections (b) and (c), Chapter 242 does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R,

Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and 242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 160, Sec. 1, eff. May 27, 2003.

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

- (1) a boarding home facility as defined by Section 260.001;
- (2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;
- (3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or
- (4) a facility that provides personal care services only to persons enrolled in a program that:
  - (A) is funded in whole or in part by the department and that is monitored by the department or its designated local mental retardation authority in accordance with standards set by the department; or
  - (B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with standards set by the department.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1,

1991. Amended by Acts 1993, 73rd Leg., ch. 608, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(b), eff. September 28, 2011.

Sec. 247.005. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does

not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 3, eff. September 1, 2009.

Sec. 247.006. ADVISORY COMMITTEE. (a) The Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. The commissioner of human services shall appoint two staff members from the department to serve as nonvoting advisory members. In appointing staff members under this subsection, the commissioner shall appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(b) The board shall appoint the advisory committee to provide for a balanced representation of assisted living providers and consumers and shall appoint one member who has expertise in life safety code regulations. At least one of the provider members must be representative of a nonprofit facility, and at least one member must be a family member of a resident of a facility.

(c) The committee shall elect the presiding officer from among its members.

(d) The committee shall advise the department on standards for licensing assisted living facilities and on the implementation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.094, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Sec. 247.051 and amended by by Acts 2001, 77th Leg., ch. 1248, Sec. 10, eff. Sept. 1, 2001.



Sec. 247.007. COMPLIANCE WITH CHAPTER 260A. (a) An assisted living facility shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an assisted living facility, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(i), eff. September 28, 2011.

#### **SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS**

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The department by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(d-1) A provisional license expires the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by the

department, in the department's sole discretion; or

(2) the date a license is issued to the provisional license holder under Subsection (d-3).

(d-2) The department shall conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license.

(d-3) After conducting a life safety code inspection, the department shall issue a license under Section 247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license. A license issued under this subsection has the same effective date as the provisional license.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(g) The department shall, upon submission of a written request by the applicant, automatically issue a six-month provisional license without conducting a life safety code inspection before issuance of the provisional license to a newly constructed facility if:

(1) the license applicant has submitted building plans to the department for an early compliance review in accordance with Section 247.0261;

(2) all local approvals, including a certificate of occupancy where required, have been obtained;

(3) a complete license application form is submitted within 30 days of receipt of all local approvals;

(4) the license fee has been paid;

(5) the department determines that the license applicant or a person who owns the license applicant and controls the operations of the license applicant constructed another facility in this state that complies with the department's life safety code standards; and

(6) the facility is in compliance with resident care standards based on an on-site health inspection.

(h) The department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991;  
Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 1088, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 382 (H.B. 3729), Sec. 1, eff. September 1, 2013.

Sec. 247.0211. EXPEDITED LIFE SAFETY CODE INSPECTION. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement an expedited inspection process that allows an applicant for an assisted living facility license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made.

(b) The department may charge a fee to recover the cost of the expedited inspection.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 5, eff. September 1, 2009.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(b-1) If the department conducts more than two life safety code inspections at the applicant's facility, the department may collect a fee in addition to the fee under Subsection (b) for the application for the license.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept.

1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 6, eff.  
September 1, 2009.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the second anniversary of the date of its issuance. The executive commissioner of the Health and Human Services Commission by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months during which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal.

(b) To renew a license, the license holder must submit to the department the license renewal fee.

(c) The board may require participation in a continuing education program as a condition of renewal of a license. The board shall adopt rules to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 14, eff.  
September 1, 2007.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another

state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.024. FEES; DISPOSITION OF REVENUE. (a) The department shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$1,500.

(b) The board shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund and shall be appropriated to the department only to administer and enforce this chapter.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the department or another state agency unless the department or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) An applicant who submits a license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 15, eff. September 1, 2007.

Sec. 247.025. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991;  
Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 3, eff. September 1, 2005.

Sec. 247.026. STANDARDS. (a) The board by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:

(1) clearly differentiate an assisted living facility from an institution required to be licensed under Chapter 242;

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) ensure that the daily nutritional and special dietary needs of each resident are met; and

(4) require an assisted living facility to:

(A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and

(B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The board shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(d) The board may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions

the board considers relevant. If the board does not prescribe minimum standards for facilities serving non-geriatric residents, it must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the board's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The board by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:

(1) has an associate's degree in nursing, health care management, or a related field from a public or private institution of higher education;

(2) has a bachelor's degree from a public or private institution of higher education; or

(3) has at least one year of experience working in management or in the health care industry.

(i) The board by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 542, Sec. 1, eff. Sept. 1, 1995;

Acts 1995, 74th Leg., ch. 583, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(57), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 734, Sec. 1, eff. Sept. 1, 2003.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

- (1) the change is required by federal law; or
- (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account and shall be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0262. REPORT ON LIFE SAFETY CODE SURVEYS. (a) The department shall annually report the number of life safety code



surveys for an initial assisted living facility license with respect to which the department first visits the facility to conduct the survey more than 60 days after the date the applicant notifies the department that the applicant is ready for the initial survey.

(b) The department may report other data related to the timeliness of life safety code surveys or the processing time of license applications.

(c) The department may include the information described by Subsections (a) and (b) in any required annual regulatory report.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 7, eff. September 1, 2009.

Sec. 247.027. INSPECTIONS. (a) In addition to the inspection required under Section 247.023(a), the department may inspect an assisted living facility annually and may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) The department shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The department shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0271. INSPECTION EXIT CONFERENCE. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. An additional exit conference must be held in person and may not be held by

telephone, e-mail, or facsimile transmission.

(d) The assisted living facility shall submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 4, eff. September 1, 2007.

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION. (a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 247.0275. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An assisted living facility licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The assisted living facility is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The assisted living facility shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.18, eff. September 1, 2009.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE.

(a) The board by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The board shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted

living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management, or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.

Added by Acts 1997, 75th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.031. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

Added by Acts 1997, 75th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 1997.  
Renumbered from Sec. 247.029 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.032. ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission on Accreditation of Healthcare Organizations, or another organization approved by the executive commissioner of the Health and Human Services Commission.

(b) The department shall accept an accreditation survey from an

accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner of the Health and Human Services Commission for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner of the Health and Human Services Commission;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this section does not limit the department in performing any power or duty under this chapter or inspection authorized by Section 247.027, including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission.

Added by Acts 2005, 79th Leg., Ch. 579 (H.B. 1558), Sec. 1, eff. January 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. 1055), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 8, eff. September 1, 2009.

For expiration of this section, see Subsection (b).

Sec. 247.033. ACCREDITATION SURVEY PILOT PROGRAM. (a) The department may develop and implement a pilot program to authorize the use of an accreditation survey that complies with Section 247.032(b) to fulfill the requirements for a life and safety code survey or inspection or another survey or inspection required by this subchapter. If the department implements the pilot program, the department may implement the pilot program with the goal that not later than August 31, 2014, at least one assisted living facility will have used an accreditation survey for the purposes of this section. The accreditation commission's standards must meet or exceed the assisted living facility licensing requirements established by the executive commissioner of the Health and Human Services Commission as required by Section 247.032(b)(1).

(b) This section expires September 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 972 (H.B. 1971), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER C. GENERAL ENFORCEMENT**

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the

procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2001.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.

(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section 247.061.

(e) The department and the State Office of Administrative

Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 6, eff. Sept. 1, 2001.

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT.

(a) The department shall conduct an investigation in accordance with Section 260A.007 after receiving a report of abuse, exploitation, or neglect of a resident of an assisted living facility.

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Protective and Regulatory Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(j), eff. September 28, 2011.

Sec. 247.044. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements



provided under this chapter if the department finds that:

(1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or

(2) the facility is operating without a license.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from 247.043 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.045. CIVIL PENALTIES. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a

civil penalty of not less than \$100 nor more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

(1) is in violation of Section 247.021; or

(2) has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than \$1,000 or more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless a penalty described under this chapter is assessed.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner of human services must approve any settlement agreement to a suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

- (1) with respect to a partnership other than a limited partnership, each partner of the partnership;
- (2) with respect to a corporation:
  - (A) an officer;
  - (B) a director;
  - (C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
  - (D) a controlling individual;
- (3) with respect to an individual:
  - (A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and
  - (B) each corporation or other business entity in which the individual or another affiliate of the individual is:
    - (i) an officer;
    - (ii) a director;
    - (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
    - (iv) a controlling individual;
- (4) with respect to a limited partnership:
  - (A) a general partner; and
  - (B) a limited partner who is a controlling individual;
- (5) with respect to a limited liability company:
  - (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and
  - (B) each owner who is a controlling individual; and
- (6) with respect to any other business entity, a controlling individual.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from Sec. 247.044 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 233, Sec. 1,

eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1194 (H.B. 1168), Sec. 9, eff. September 1, 2007.

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed \$1,000 for each violation.

(c) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the department shall consider any matter that justice may require, but must consider

each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(f) The department may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 16, eff. September 1, 2007.

Sec. 247.0452. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines results in serious harm to or death of a resident;

(2) to a violation described by Sections 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;

(3) to a second or subsequent violation of:

(A) a right of the same resident under Section 247.064;  
or

(B) the same right of all residents under Section 247.064; or

(4) to a violation described by Section 247.066, which contains its own right to correct provisions.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 17, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(k), eff. September 28, 2011.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner or the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner or the commissioner's designee by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 247.0454(d) to the person charged. If the commissioner or the



commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

- (1) the findings;
- (2) the amount of the administrative penalty;
- (3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
- (4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and
- (5) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the commissioner or the commissioner's designee is final, the person charged with the penalty shall:

- (1) pay the full amount of the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

- (1) the penalty is subject to interest; and
- (2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the commissioner shall:

- (1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In

submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established

under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 3, eff. September 1, 2005.

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES.

(a) The department shall assess an administrative penalty against an assisted living facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.05, eff. Sept. 1, 1999. Renumbered from Sec. 247.0455 and amended by Acts 2001, 77th Leg., ch. 1248, Sec. 7, eff. Sept. 1, 2001.

Sec. 247.046. COOPERATION AMONG AGENCIES. The board, the Department of Protective and Regulatory Services, and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities and coordinates each agency's activities;

(2) details coordinated procedures to be used by each agency in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;

(3) identifies enforcement needs each agency may have in order to perform its duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

Added by Acts 1991, 72nd Leg., ch. 349, Sec. 1, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.093, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 416, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.047. TRANSITION. The department shall grant to a personal care facility licensed on or before December 31, 1990, under Chapter 242 a temporary permit to continue operation until the department performs any inspection or investigation required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from Sec. 247.045 by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.046 by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

- (1) the general characteristics of assisted living facilities and residents of those facilities;
- (2) the different types of assisted living facilities;
- (3) the laws applicable to assisted living facilities; and
- (4) the authority of the department and other entities to enforce applicable laws.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.049. USE OF REGULATORY REPORTS AND DOCUMENTS. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

- (1) bar the admission into evidence of department reports

or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045;

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 9, eff. Sept. 1, 2001.

Sec. 247.050. MONITORING OF UNLICENSED FACILITIES; REPORTING.

(a) The board shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted

living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted living facilities that are received;

(B) complaints that are investigated;

(C) unsubstantiated complaints;

(D) substantiated complaints; and

(E) cases referred to the attorney general.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 990, Sec. 10(5), eff. June 17, 2011.

(c) The department shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

(d) The department shall permanently retain at least one copy or one electronic source of information pertaining to complaints and investigations of unlicensed assisted living facilities used to maintain a registry as required under Subsection (a)(1) and used to prepare a report under Subsection (a)(2).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.09, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 8, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 10(5), eff. June 17, 2011.

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process to address disputes between a facility and the department concerning a statement of violations prepared by the department in accordance with this section. The process must provide

for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the Health and Human Services Commission to complete the process not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 10th business day after the date an assisted living facility requests an informal dispute resolution, the department forward to the assisted living facility a copy of all information that is referred to in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, excluding:

(A) the name of any complainant, witness, or informant;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) the Health and Human Services Commission to give full consideration to all factual arguments raised during the informal dispute resolution process that:

(A) are supported by references to specific information that the facility or department relies on to dispute or support findings in the statement of violations; and

(B) are provided by the proponent of the argument to the Health and Human Services Commission and the opposing party;

(5) that informal dispute resolution staff give full consideration to the information provided by the assisted living facility and the department;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the department; and



(7) that the assisted living facility and the department be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the department and to respond to arguments and information presented against them.

(b) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the department for any costs associated with the department's preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the department following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the department while the dispute is pending if the posting clearly notes each finding that is in dispute.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 13, eff. Sept. 1, 2001.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER D. MISCELLANEOUS PROVISIONS**

Sec. 247.061. COORDINATION BETWEEN AGENCIES. (a) The department and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.095, eff. Sept. 1, 1995. Renumbered from Sec. 247.062 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.062. DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to disabled persons.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from 247.063 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.063. REFERRALS. (a) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority gains knowledge of an assisted living facility that is not operated or licensed by the Texas Department of Mental Health and Mental Retardation, the authority, or the Texas Department of Human Services and that has four or more residents who are unrelated to the proprietor of the facility, the Texas Department of Mental Health and Mental Retardation or the authority shall report the name, address, and telephone number of the facility to the Texas Department of Human

Services.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.096, eff. Sept. 1, 1995. Renumbered from Sec. 247.064 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0631. ACCESS. An employee of the Texas Department of Mental Health and Mental Retardation or an employee of a local mental health and mental retardation authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. (a) Each assisted living facility shall post a residents' bill of rights in a prominent place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

- (1) manage the resident's financial affairs;
- (2) determine the resident's dress, hair style, or other personal effects according to individual preference, except that the resident has the responsibility to maintain personal hygiene;
- (3) retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;
- (4) receive and send unopened mail;
- (5) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;
- (6) privacy;
- (7) unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;
- (8) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
- (9) present grievances on behalf of the resident or others

to the operator, state agencies, or other persons without threat of reprisal in any manner;

(10) a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;

(11) refuse to perform services for the facility, except as contracted for by the resident and operator;

(12) practice the religion of the resident's choice;

(13) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(14) not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.065 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

(1) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(2) terminate a resident's contract for just cause after a written 30-day notice;

(3) terminate a contract immediately, after notice to the

department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;

(4) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(8) refuse a person referred to the facility if the referral is inappropriate;

(9) maintain an environment free of weapons and drugs; and

(10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.066 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. (a) The department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(b-1) If a facility identifies a resident who the facility

believes is inappropriately placed at the facility, the facility is not required to move the resident if the facility obtains the written statements and waiver prescribed by Subsection (c).

(c) If a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility determines or is informed of the department's determination that a resident is inappropriately placed at the facility, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If the department determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements and waiver prescribed by Subsection (c) that would allow the resident to remain in the facility, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(d-1) If a facility is required to discharge the resident because the facility has not obtained the written statements prescribed by Subsection (c) or the department does not approve a waiver based on the written statements submitted, the department may:

(1) assess an administrative penalty against the facility

if the facility intentionally or repeatedly disregards department criteria for obtaining a waiver for inappropriate placement of a resident;

(2) seek an emergency suspension or closing order against the facility under Section 247.042 if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

(3) seek other sanctions against the facility under Subchapter C in lieu of an emergency suspension or closing order if the department determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

(d-2) The executive commissioner by rule shall develop criteria under which the department may determine when a facility has intentionally or repeatedly disregarded the waiver process.

(e) To facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (b-1) or (c)(1)-(3), as appropriate. The department shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

(f) The department shall ensure that each facility and resident is aware of the waiver process described by Subsection (c) for aging in place. A facility must include with the facility disclosure statement required under Section 247.026(b)(4)(B) information regarding the policies and procedures for aging in place described by this section.

(g) The department, in cooperation with assisted living service providers, shall develop cost-effective training regarding aging in place, retaliation, and other issues determined by the department.

(h) The department shall require surveyors, facility supervisors, and other staff, as appropriate, to complete the training described by Subsection (g) annually.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. [2109](#)), Sec. 1, eff.

June 17, 2011.

Sec. 247.067. HEALTH CARE PROFESSIONALS. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(b) Unless otherwise prohibited by law, a health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right to contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional for health care services.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(c),  
eff. September 28, 2011.

Sec. 247.068. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

(c) A department employee may not retaliate against an assisted



living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

- (1) complaining about the conduct of a department employee;
- (2) disagreeing with a department employee about the existence of a violation of this chapter or a rule adopted under this chapter; or
- (3) asserting a right under state or federal law.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. [2109](#)), Sec. 2, eff. June 17, 2011.

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if consumers are advised of all other community care options.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. [1055](#)), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 18, eff. September 1, 2007.

#### **SUBCHAPTER E. ARBITRATION**

Sec. 247.081. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between a facility licensed under this chapter and the department relating to:

- (1) renewal of a license under Section 247.023;
- (2) suspension, revocation, or denial of a license under Section 247.041;
- (3) assessment of a civil penalty under Section 247.045; or
- (4) assessment of an administrative penalty under Section 247.0451.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.082. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected facility may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected facility may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is earlier. If a civil penalty is requested after the initial filing of a Section 242.094 action through the filing of an amended or supplemental pleading, an affected facility must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected facility that has had an arbitration award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court shall dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and does not have jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.083. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed \$1,000.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.084. ARBITRATOR QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.085. ARBITRATOR SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.086. ARBITRATOR DUTIES. The arbitrator shall:

- (1) protect the interests of the department and the facility;
- (2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility; and
- (3) render an order consistent with this chapter and the rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.087. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the facility of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or facility. The arbitrator may not unreasonably deny a request for a continuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.088. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the facility shall exchange and file with the arbitrator:

- (1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and
- (2) information relating to a proposed resolution of the dispute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.089. ATTENDANCE. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after

notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.090. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the facility.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.091. EVIDENCE. (a) The department or the facility may offer evidence and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.092. CLOSING STATEMENTS; BRIEFS. The department and the facility may present closing statements, but the record does not remain open for written briefs unless required by the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.093. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the facility may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings for transmittal to the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.094. ORDER. (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and facility's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the facility in writing of the decision.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.095. EFFECT OF ORDER. An order of an arbitrator under

this subchapter is final and binding on all parties. Except as provided by Section 247.097, there is no right to appeal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.096. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award until the 20th day after the date of the award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.097. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of a facility, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of a facility.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 247.094(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the facility or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.098. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS FOR CIVIL PENALTIES. (a) This section applies only to a suit for the assessment of a civil penalty under Section 247.045 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 247.097(d)(2), a motion is made to the court to vacate the arbitrator's order in accordance with Section 247.097.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 247.097 and within the time limit prescribed by Section 247.097(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

## **CHAPTER 248. SPECIAL CARE FACILITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 248.001. SHORT TITLE. This chapter may be cited as the Texas Special Care Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Medical care" means care that is:



(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician;  
and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

(9) "Bereavement services" has the meaning assigned by Section 142.001.

(10) "Palliative care" has the meaning assigned by Section 142.001.

(11) "Support services" has the meaning assigned by Section 142.001.

(12) "Residential AIDS hospice" means a facility licensed and designated as a residential AIDS hospice under this chapter.

(13) "Residential AIDS hospice care" means hospice services provided in a residential AIDS hospice.

(14) "AIDS" means acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 30, eff. Sept. 1, 1993.

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act);

(7) a child care institution, foster group home, foster family home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Protective and Regulatory Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 504, Sec. 1, eff. Sept. 1, 1993;  
Acts 1993, 73rd Leg., ch. 800, Sec. 29, eff. Sept. 1, 1993.

#### **SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS**

Sec. 248.021. LICENSE REQUIRED. A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.022. APPLICATION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and the rules adopted by the board.

(b) A license shall be renewed at the times and in accordance with the rules established by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.024. FEES. (a) The board shall establish a license application fee in the amount of \$25 for each facility bed or \$200, whichever is greater, but the fees may not exceed \$1,000.

(b) The board may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(c) All fees collected under this chapter are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund and may be appropriated only to the department to administer this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.026. DUTIES OF BOARD. (a) The board shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

- (1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;
- (2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;
- (3) residents' rights;
- (4) medical and nursing care and services provided by a license holder;
- (5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;
- (6) records of care and services kept by the license holder, including the disposal or destruction of those records;
- (7) safety, fire prevention, and sanitary provisions;
- (8) transfer of residents in a medically appropriate manner from or to a special care facility;
- (9) construction plan approval and inspection; and
- (10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the board to establish the qualifications of licensed health care providers or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the board.

(b) Construction of a facility is subject to construction plan approval by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.029. RESIDENTIAL AIDS HOSPICE DESIGNATION. (a) The board by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the board shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;

(3) the provision of support services to the family of a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

(c) A special care facility licensed under this chapter that satisfies the standards adopted under this section shall be designated as a residential AIDS hospice.

(d) Notwithstanding Chapter 142, a special care facility licensed and issued a designation as a residential AIDS hospice under this chapter may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation of the facility if the similar term or language clearly identifies

the facility as a facility regulated under this chapter and clearly distinguishes the facility from a hospice regulated under Chapter 142.

(e) A special care facility licensed under this chapter on July 1, 1994, on notice to the department that it is in compliance with the standards adopted for designation as a residential AIDS hospice, shall be issued that designation by the department, and that designation is valid until the date the license of the facility expires or is renewed.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 31, eff. Sept. 1, 1993.

### **SUBCHAPTER C. GENERAL ENFORCEMENT**

Sec. 248.051. LICENSE DENIAL, SUSPENSION, PROBATION, OR REVOCATION. (a) The department may deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

(c) If the department finds that a special care facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a special care facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 9, 10, eff. June 20, 2003.

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the board under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or board rules, the district court shall grant the injunctive relief that the facts warrant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the board under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than \$1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES.

(a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.06, eff. Sept. 1, 1999.

Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. ADMINISTRATIVE PENALTY**

Sec. 248.101. IMPOSITION OF PENALTY. (a) The department of health may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a



violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 248.103, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the

determination and impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.105. HEARING. (a) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty;  
or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the commissioner of public health under Section 248.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 248.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner of public health by certified mail.

(b) If the commissioner of public health receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.109. COLLECTION OF PENALTY. (a) If the person does

not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond

after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

**CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 248A.001. DEFINITIONS. In this chapter:

(1) "Basic services" includes:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent or legal guardian; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor served; and

(B) the caregiver training needs of the minor's parent or legal guardian.

(2) "Center" means a prescribed pediatric extended care center.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means the commissioner of aging and disability services.

(5) "Controlling person" has the meaning assigned by Section 248A.0012.

(6) "Department" means the Department of Aging and Disability Services.

(7) "Executive commissioner" means the executive commissioner of the commission.

(8) "Medically dependent or technologically dependent minor" means a minor who because of an acute, chronic, or intermittent medically complex or fragile condition or disability requires ongoing, technology-based skilled nursing care prescribed by the minor's physician to avert death or further disability or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include minor or occasional medical conditions that do not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(9) "Minor" means an individual younger than 21 years of age.

(10) "Prescribed pediatric extended care center" means a facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(2) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(3) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the

person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(c) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of a center or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(d) A controlling person described by Subsection (b)(3) does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of a center.

(e) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.002. EXEMPTIONS. This chapter does not apply to:

- (1) a facility operated by the United States government or a federal agency; or
- (2) a health facility otherwise licensed under this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. To the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER B. LICENSING OF CENTERS**

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION. (a) A person may not own or operate a prescribed pediatric extended care center in this state unless the person holds a license issued under this chapter.

(b) A separate license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same person.

(c) A person may not operate a center on the same premises as:

(1) a child-care facility licensed under Chapter 42, Human Resources Code; or

(2) any other facility licensed by the department or the Department of State Health Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.052. APPLICATION; ISSUANCE. (a) An applicant for a prescribed pediatric extended care center license shall submit to the department in accordance with executive commissioner rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

(b) The application must contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the location and use of the premises meet local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for:

(A) the applicant;

(B) the administrator responsible for daily operations of the center;

(C) the financial officer responsible for financial operations of the center; and

(D) each controlling person;

(4) the name, address, and federal employer identification



number or taxpayer identification number of the applicant and of each controlling person, if the applicant or controlling person is not an individual;

(5) the business name of the center;

(6) the maximum patient capacity requested for the center;

and

(7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) The department shall issue a license to a center under this chapter if the department determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. The license must include:

(1) the license holder's name;

(2) the location of the premises of the center; and

(3) a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide 24-hour care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.053. LICENSE TERM; RENEWAL; NOTIFICATION. (a) A license issued under this chapter expires on the second anniversary of the date of issuance.

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the department on the form prescribed by the department at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by the department; and

(3) comply with any other requirements specified by executive commissioner rule.

(c) The department shall assess a \$50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee may not exceed the lesser of 50 percent of the license renewal fee or \$500.

(d) At least 120 days before expiration of a center license, the department shall notify the owner or operator of the center of

the license expiration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. A license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and is not transferable or assignable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

**SUBCHAPTER C. POWERS AND DUTIES OF  
EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT**

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for the physically disabled, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive services;

(9) standards relating to transportation services; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

(c) The executive commissioner by rule shall authorize the commissioner to grant a waiver from compliance with standards adopted under Subsection (b)(3), (4), or (6) to a center located in a municipality that adopts a code to regulate any of those standards if the commissioner determines the applicable municipal code standards exceed the corresponding standards adopted under Subsection (b)(3), (4), or (6).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN. (a) The department may inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. The center shall provide the department with access to all center records.

(b) The department shall inspect a center before issuing or renewing a license under this chapter.

(c) The department may require a center that undergoes an inspection to:

(1) take appropriate corrective action necessary to comply with the requirements of this chapter and rules adopted under this chapter; and

(2) submit a corrective action plan to the department for approval.

(d) A center shall make available to any person on request a

copy of each inspection report pertaining to the center that has been issued by the department. Before making an inspection report available under this subsection, the center shall redact from the report any information that is confidential under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.103. FEES. (a) The executive commissioner shall set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund and shall be appropriated to the department to administer and enforce this chapter.

(c) A fee collected under this chapter is nonrefundable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.104. COMMISSION DUTIES. The commission shall designate a center licensed under this chapter as a health care services provider under the medical assistance program established under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER D. CENTER REGULATION**

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT. (a) A center may not admit a minor client to the center unless:

- (1) the client is a medically dependent or technologically dependent minor;
- (2) the minor's prescribing physician issues a prescription ordering care at a center;
- (3) the minor's parent or legal guardian consents to the minor's admission to the center; and
- (4) the admission is voluntary based on the parent's or

legal guardian's preference in both managed care and non-managed care service delivery systems.

(b) An admission authorized under this section is not intended to supplant the right to a Medicaid private duty nursing benefit, when medically necessary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT CAPACITY. (a) A center may not provide services to a minor for more than 12 hours in any 24-hour period.

(b) A center may not provide services other than services regulated under this chapter and executive commissioner rule.

(c) The maximum patient capacity at a center may not exceed 60.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.153. LICENSE DISPLAY. Each center licensed under this chapter shall display the center's license in a conspicuous location readily visible to a person entering the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.154. MAINTENANCE OF RECORDS. Each center shall maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.155. COMPLAINTS. A person may file a complaint with the department against a center licensed or required to be licensed under this chapter. The department shall investigate the complaint in accordance with the complaint procedures established under Chapter

161, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) A center shall comply with Chapter 260A and rules adopted under that chapter.

(b) An owner, center employee, or other person subject to Chapter 260A shall comply with that chapter and rules adopted under that chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.157. CLOSING OF CENTER. At least 30 days before the date a center voluntarily discontinues operation, the owner or operator of the center shall inform the parent or legal guardian of each minor client to whom the center is providing services of:

- (1) the discontinuance; and
- (2) the proposed time of the discontinuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER E. GENERAL ENFORCEMENT**

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department may deny, suspend, or revoke a license issued under this chapter for:

- (1) a violation of this chapter or a rule or standard adopted under this chapter;
- (2) an intentional or negligent act by the center or an employee of the center that the department determines significantly affects the health or safety of a minor served by the center;
- (3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;
- (4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required to undergo a

background and criminal history check under this chapter;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception; or

(6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state.

(b) Except as provided by Section 248A.203, the procedures by which the department denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.202. PROBATION. (a) If the department finds that a center is in repeated noncompliance with this chapter, rules adopted under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license.

(b) The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this

chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a minor served by the center or the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) The hearing and any appeal are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.204. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating this chapter or the rules adopted under this chapter, may by injunction:

- (1) prohibit the person from continuing the violation;
- (2) restrain or prevent the establishment or operation of a center without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Venue for a suit brought under this section is in the county in which the center is located or in Travis County.



Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.205. CIVIL PENALTY. (a) A person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than \$500 for each violation if the department determines the violation threatens the health and safety of a minor served by the center.

(b) Each day a violation continues constitutes a separate violation for the purposes of this section.

(c) The attorney general may sue to collect the penalty. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) All penalties collected under this section shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.206. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a violation continues constitutes a separate offense.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER F. ADMINISTRATIVE PENALTY**

Sec. 248A.251. IMPOSITION OF PENALTY. The commissioner may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or standard adopted or order issued under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.252. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) any previous violations;
- (4) the amount necessary to deter a future violation;
- (5) the efforts made by the violator to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice sent under Section 248A.253, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the

violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner by order shall approve the determination and impose the recommended penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.255. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.256. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

- (1) find that a violation occurred and impose a penalty; or
- (2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the order of the commissioner

imposing an administrative penalty under Section 248A.256 becomes final, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 248A.257, a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account in the court registry; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the commissioner's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) sending a copy of the affidavit to the commissioner by certified mail.

(b) If the commissioner receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.259. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.260. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.262. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

**CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES SERVING THE ELDERLY, PERSONS WITH DISABILITIES, OR PERSONS WITH TERMINAL ILLNESSES**

Sec. 250.001. DEFINITIONS. In this chapter:

(1) "Nurse aide registry" means a list maintained by the Department of Aging and Disability Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.

(2) "Direct contact with a consumer" means any contact with a consumer.

(3) "Facility" means:

(A) a nursing home, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;

(B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;

(C) a home and community support services agency

licensed under Chapter 142;

(D) an adult day care facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;

(E) a facility for persons with mental retardation licensed under Chapter 252;

(F) an adult foster care provider that contracts with the Department of Aging and Disability Services;

(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;

(H) a local mental health or mental retardation authority designated under Section 533.035;

(I) a person exempt from licensing under Section 142.003(a)(19);

(J) a special care facility licensed by the Department of State Health Services under Chapter 248; or

Text of paragraph as added by Acts 2013, 83rd Leg., R.S., Ch. 605,  
Sec. 1

(K) a mental health service unit of a hospital licensed under Chapter 241

Text of paragraph as added by Acts 2013, 83rd Leg., R.S., Ch. 1168,  
Sec. 3

(K) a prescribed pediatric extended care center licensed by the Department of Aging and Disability Services under Chapter 248A.

(3-a) "Financial management services agency" means an entity that contracts with the Department of Aging and Disability Services to serve as a fiscal and employer agent for an individual employer in the consumer-directed service option described by Section 531.051, Government Code.

(3-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring service providers to deliver program services.

(4) "Private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility.

(5) "Regulatory agency" means a state agency referred to in Subdivision (3).

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1209, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.198, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1189 (H.B. 3737), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 605 (S.B. 944), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 3, eff. September 1, 2013.

Sec. 250.002. INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) A regulatory agency or a financial management services agency on behalf of an individual employer is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment at a facility other than a facility licensed under Chapter 142;

(2) an employee of a facility other than a facility licensed under Chapter 142;

(3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or

(4) an applicant for employment by or an employee of an individual employer.

(a-1) A facility or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment with, an employee of, or a



volunteer with the facility;

(2) an applicant for employment with or an employee of a person or business that contracts with the facility;

(3) an applicant for employment by or an employee of an individual employer; or

(4) a student enrolled in an educational program or course of study who is at the facility for educational purposes.

(b) A facility may:

(1) pay a private agency to obtain criminal history record information for a person described by Subsection (a-1) directly from the Department of Public Safety of the State of Texas; or

(2) obtain the information directly from the Department of Public Safety.

(c) The private agency shall forward criminal history record information received under this section to the facility requesting the information.

(c-1) A financial management services agency shall forward criminal history record information received under this section to the individual employer requesting the information.

(d) A regulatory agency may adopt rules relating to the processing of information requested or obtained under this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 2001, 77th Leg., ch. 1025, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 266 (H.B. 729), Sec. 3, eff. June 14, 2013.

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH; DISCHARGE. (a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been

convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the facility or to direct contact with the individual using the consumer-directed service option;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer.

(a-1) Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(a-2) If a facility employs a person pending a criminal history check, the facility shall ensure that the person has no direct contact with a consumer until the facility obtains the person's criminal history record information and verifies the person's employability under Section 250.006.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested:

(1) within 72 hours of employment; or

(2) if the facility is licensed under Chapter 242 or 247, within 24 hours of employment.

(c) A facility or individual employer shall immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

(c-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 363, Sec. 11, eff. January 1, 2014.

(d) In addition to the initial verification of employability, a facility or an individual employer or financial management services agency on behalf of an individual employer shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a consumer or an individual using the consumer-directed service option; and

(2) maintain in the facility's or individual employer's books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.002 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 436 (H.B. [2191](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. [806](#)), Sec. 6, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. [806](#)), Sec. 7, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 27.001(27), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 3.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. [1720](#)), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. [2683](#)), Sec. 2, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 11, eff. January 1, 2014.

Sec. 250.0035. TRAINING REQUIREMENTS; CONTINUING EDUCATION.

(a) To be listed on the nurse aide registry, an applicant must complete a training program approved by the Department of Aging and Disability Services that includes:

(1) not less than 100 hours of course work as specified by rule; and

(2) a competency evaluation on completion of the training program.

(b) A listing on the nurse aide registry expires on the second anniversary of the date of the listing.

(c) To renew a nurse aide's listing on the registry, the nurse aide must complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, in the care of patients with Alzheimer's disease.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 408 (S.B. 795), Sec. 1, eff. September 1, 2011.

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES. (a)

Identifying information of an employee in a covered facility or of an employee of an individual employer shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility or individual employer may determine appropriate. In this subsection, "identifying information" includes:

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be

reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 or if the conviction may be a contraindication to employment.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.003 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 22, eff. September 1, 2011.

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If a facility, financial management services agency, or individual employer believes that a conviction may bar a person from employment in a facility or by the individual employer under Section 250.006 or may be a contraindication to employment, the facility or individual employer shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility or individual employer if inaccurate information is discovered.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.004 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 23, eff. September 1, 2011.

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. (a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecent with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery);
- (13) an offense under Section 29.03, Penal Code (aggravated robbery);
- (14) an offense under Section 21.08, Penal Code (indecent exposure);
- (15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);
- (16) an offense under Section 21.15, Penal Code (improper photography or visual recording);
- (17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 32.53, Penal Code (exploitation of a child, elderly individual, or disabled individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (Medicaid fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

(c) In addition to the prohibitions on employment prescribed by Subsections (a) and (b), a person for whom a facility licensed under Chapter 242 or 247 is entitled to obtain criminal history record information may not be employed in a facility licensed under Chapter 242 or 247 if the person has been convicted:

(1) of an offense under Section 30.02, Penal Code (burglary); or

(2) under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense under Section 30.02, Penal Code.

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Section 5(c), Article 42.12, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.39, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.005 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1025, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1084, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1209, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.44, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 971 (S.B. 199), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 817 (H.B. 2609), Sec. 1, eff. September 1, 2011.



Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.06, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 24, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 3, eff. January 1, 2014.

Sec. 250.007. RECORDS PRIVILEGED. (a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 25, eff. September 1, 2011.

Sec. 250.008. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as prescribed by Section 250.007(b) or (c).

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.009. CIVIL LIABILITY. (a) A facility, an officer or employee of a facility, a financial management services agency, or an individual employer is not civilly liable for failure to comply with this chapter if the facility, financial management services agency, or individual employer makes a good faith effort to comply.

(b) A regulatory agency is not civilly liable to a person for criminal history record information forwarded to a requesting facility in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.08, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 26, eff. September 1, 2011.

## **CHAPTER 251. END STAGE RENAL DISEASE FACILITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 251.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.
- (4) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.
- (5) "Dialysis technician" means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.
- (6) "End stage renal disease" means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.
- (7) "End stage renal disease facility" means a facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.
- (8) "Medical review board" means a medical review board

that:

(A) is appointed by a renal disease network organization which includes this state; and

(B) has a contract with the Health Care Financing Administration of the United States Department of Health and Human Services under Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section 1395rr).

(9) "Physician" means an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.790, eff. Sept. 1, 2001.

Sec. 251.002. FEES. (a) The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(b) In setting fees under this section, the board shall consider setting a range of license and renewal fees based on the number of dialysis stations at each end stage renal disease facility and the patient census.

(c) An end stage renal disease facility owned or operated by a state agency is not required to pay fees imposed under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.003. ADOPTION OF RULES. The board shall adopt rules to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

#### **SUBCHAPTER B. LICENSING OF END STAGE RENAL DISEASE FACILITIES**

Sec. 251.011. LICENSE REQUIRED. Except as provided by Section 251.012, a person may not operate an end stage renal disease facility without a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.012. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

- (1) a home and community support services agency licensed under Chapter 142 with a home dialysis designation;
- (2) a hospital licensed under Chapter 241 that provides dialysis only to individuals receiving:
  - (A) inpatient services from the hospital; or
  - (B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;
- (3) a hospital operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving:
  - (A) inpatient services from the hospital; or
  - (B) outpatient services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice;
- (4) an end stage renal disease facility operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice; or
- (5) the office of a physician unless the office is used primarily as an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.02, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.002, eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 65.05, eff.

September 28, 2011.

Sec. 251.013. ISSUANCE AND RENEWAL OF LICENSE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the board.

(b) Each application must be accompanied by a nonrefundable license fee.

(c) Each application must contain evidence that there is at least one qualified physician on the staff of the facility and that each dialysis technician on staff has completed the training program required by this chapter.

(d) The department may grant a temporary initial license to an applicant. The temporary initial license expires on the earlier of:

(1) the date the department issues or denies the license;  
or

(2) the date six months after the date the temporary initial license was issued.

(e) The department shall issue a license if, after inspection and investigation, it finds the applicant meets the requirements of this chapter and the standards adopted under this chapter.

(f) The license is renewable annually after submission of:

(1) the renewal application and fee; and

(2) an annual report on a form prescribed by the board.

(g) The annual report required under Subsection (f) must include information related to the quality of care at the end stage renal disease facility. The report must be in the form and documented by evidence as required by board rule.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.014. MINIMUM STANDARDS. (a) The rules adopted under Section 251.003 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility, including standards for:

(1) the qualifications and supervision of the professional staff, including physicians, and other personnel;

(2) the equipment used by the facility is compatible with the health and safety of the patients;

- (3) the sanitary and hygienic conditions in the facility;
- (4) quality assurance for patient care;
- (5) the provision and coordination of treatment and services by the facility;
- (6) clinical records maintained by the facility;
- (7) design and space requirements for the facility for safe access by patients and personnel and for ensuring patient privacy;
- (8) indicators of the quality of care provided by the facility; and
- (9) water treatment and reuse by the facility.

(b) The standards described in Subsection (a)(7) of this section shall apply only:

- (1) to a facility which initiates the provision of end stage renal disease services on or after September 1, 1996; or
- (2) to the area of a facility affected by design and space modifications or renovations completed after September 1, 1996.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.015. MEDICAL REVIEW BOARD. (a) A medical review board shall advise the board on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made

confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. DIALYSIS TECHNICIANS**

Sec. 251.031. TRAINING REQUIRED. An individual may not act as a dialysis technician employed by or working in an end stage renal disease facility unless that individual is trained and competent under this subchapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The rules adopted by the board under Section 251.003 shall establish:

- (1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;
- (2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;
- (3) minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and
- (4) the acts and practices that are allowed or prohibited for dialysis technicians.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. INSPECTIONS**

Sec. 251.051. INSPECTIONS. (a) The department may conduct an inspection of an end stage renal disease facility to verify compliance with this chapter, rules adopted under this chapter, or a corrective action plan under Section 251.061.

(b) An inspection conducted under this section may be unannounced.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.052. DISCLOSURE OF UNANNOUNCED INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date or time of or any other fact about an unannounced inspection of an end stage renal disease facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

- (1) the department;
- (2) the office of the attorney general; or
- (3) any other person authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

#### **SUBCHAPTER E. ENFORCEMENT**

Sec. 251.061. CORRECTIVE ACTION PLAN. (a) The department may use a corrective action plan as an alternative to enforcement action under this subchapter.

(b) Before taking enforcement action under this subchapter, the department shall consider whether the use of a corrective action plan under this section is appropriate. In determining whether to use a corrective action plan, the department shall consider whether:

(1) the end stage renal disease facility has violated this chapter or a rule adopted under this chapter and the violation has resulted in an adverse patient result;

(2) the facility has a previous history of lack of compliance with this chapter, rules adopted under this chapter, or a corrective action plan; or

(3) the facility fails to agree to a corrective action plan.

(c) The department may use a level one, level two, or level three corrective action plan, as determined by the department in accordance with this section, after inspection of the end stage renal



disease facility.

(d) A level one corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter, but the circumstances are not serious or life-threatening. Under a level one corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor may supervise the implementation of the plan.

(e) A level two corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are potentially serious or life-threatening or if the department finds that the facility failed to implement or comply with a level one corrective action plan. Under a level two corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor shall supervise the implementation of the plan. Supervision of the implementation of the plan may include on-site supervision, observation, and direction.

(f) A level three corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are serious or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan. Under a level three corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. In connection with requiring a level three corrective action plan, the department may seek the appointment of a temporary manager under Subchapter F.

(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

(h) The department shall select the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a member of the medical review board. The

monitor may not be or include individuals who are current or former employees of the facility that is the subject of the corrective action plan or of an affiliated facility. The purpose of the monitor is to observe, supervise, consult, and educate the facility and the employees of the facility under a corrective action plan. The facility shall pay the cost of the monitor.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.062. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an end stage renal disease facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of an end stage renal disease facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Amended by Acts 2003, 78th Leg., ch. 802, Sec. 11, 12, eff. June 20, 2003.

Sec. 251.0621. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 802, Sec. 13, eff. June 20, 2003.

Sec. 251.063. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of patients of an end stage renal disease facility.

(b) A district court, on petition of the department and on a finding that a person is violating this chapter or a rule adopted under this chapter, may by injunction:

- (1) prohibit a person from continuing the violation;
- (2) restrain or prevent the operation of an end stage renal disease facility without a license issued under this chapter; or
- (3) grant other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the end stage renal disease facility is located or in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.064. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 251.011 or 251.031.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.065. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not more than \$1,000 for each violation if the department finds that the violation threatens the health and safety of a patient of an end stage renal disease facility.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of

the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty, based on the factors listed in Section 251.066(c); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the recommended penalty.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the commissioner or the commissioner's designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the commissioner's order under Section 251.068(c) to the person notified. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the commissioner's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty in full;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final;or

(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
- (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within

five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.070. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue

fund.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.071. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date of a board order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 251.063 or 251.065 or to enforce an administrative penalty assessed under Section 251.066, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

#### **SUBCHAPTER F. TEMPORARY MANAGER**

Sec. 251.091. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:



(1) specify all terms and conditions of the temporary manager's appointment and authority; and

(2) preserve all rights of the individuals served by the facility granted by law.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.092. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage an end stage renal disease facility if:

(1) the facility is operating without a license;

(2) the department has denied, suspended, or revoked the facility's license but the facility continues to operate;

(3) license denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) the department determines a level three corrective action plan under Section 251.061 that includes appointment of a temporary manager is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing, a court shall appoint a temporary manager to manage a facility if the court finds that the appointment of the manager is necessary.

(c) The court order shall address the duties and authority of the temporary manager, which may include management of the facility and the provision of dialysis services to facility patients until

specified circumstances occur, such as new ownership of the facility, compliance with this chapter and rules adopted under this chapter, or closure of the facility.

(d) If possible, the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(e) Venue for an action under this section is in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.093. FEE; RELEASE OF FUNDS. (a) A temporary manager appointed under Section 251.092 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under Subsection (b) may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

- (1) Medicaid, Medicare, or insurance payments; or
- (2) payments from another third party.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

## **CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 252.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for the mentally retarded and the establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Human Services.

(2) "Department" means the Texas Department of Human Services.

(3) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(4) "Facility" means a home or an establishment that:

(A) furnishes food, shelter, and treatment or services to four or more persons unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of persons with mental retardation or related conditions; and

(C) provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.

(5) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(6) "Person" means an individual, firm, partnership, corporation, association, or joint stock company and includes a legal successor of those entities.

(7) "Resident" means an individual, including a client, with mental retardation or a related condition who is residing in a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.003. EXEMPTIONS. Except as otherwise provided by this chapter, this chapter does not apply to an establishment that:

(1) provides training, habilitation, rehabilitation, or education to individuals with mental retardation or a related condition;

(2) is operated under the jurisdiction of a state or federal agency, including the Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services, Health and Human Services Commission, Texas Department of Criminal Justice, and Department of

Veterans Affairs;

(3) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; and

(4) is conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.094, eff. September 1, 2009.

Sec. 252.004. ALLOCATED FEDERAL MONEY. The department may accept and use any money allocated by the federal government to the department for administrative expenses.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.005. LANGUAGE REQUIREMENTS PROHIBITED. A facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.006. RIGHTS OF RESIDENTS. Each facility shall implement and enforce Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The department and any designee of the department shall:

(1) adopt rules to reduce the amount of paperwork a facility must complete and retain; and

(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, any designee of the department, and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.008. RULES GENERALLY. (a) The board shall adopt rules related to the administration and implementation of this chapter.

(b) The department and the Texas Department of Mental Health and Mental Retardation shall cooperate in developing proposed rules under this section. Before the board adopts a rule applicable to a facility, the board shall present the proposed rule to the commissioner of mental health and mental retardation for review of the effects of the proposed rule. Not later than the 31st day after the date the proposed rule is received, the commissioner of mental health and mental retardation shall provide the board a written statement of the effects of the proposed rule. The board shall consider the statement in adopting a rule under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 160, Sec. 1, eff. Sept. 1, 2001.

Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 4, eff. September 1, 2005.

Sec. 252.009. CONSULTATION AND COORDINATION. (a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and

(2) use the facilities of the department or a designee of the department, particularly in establishing and maintaining standards relating to the humane treatment of residents.

(b) The department may cooperate with local public health officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.010. CHANGE OF ADMINISTRATORS; FEE. A facility that hires a new administrator or other person designated as the chief management officer for the facility shall:

(1) notify the department in writing of the change not later than the 30th day after the date on which the change becomes effective; and

(2) pay a \$20 administrative fee to the department.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.011. PROHIBITION OF REMUNERATION. (a) A facility may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.

(b) The department may revoke the license of a facility that violates Subsection (a).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

#### **SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS**

Sec. 252.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a facility in this state without a license issued under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this section, "controlling person" means a person who, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or a person who operates a facility. The term includes:

- (1) a management company or other business entity that operates or contracts with others for the operation of a facility;
- (2) a person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility; and
- (3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b) A controlling person described by Subsection (a)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(c) The executive commissioner of the Health and Human Services Commission may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) A person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with Chapter 250.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 10, eff. June 11, 2009.

Sec. 252.032. LICENSE APPLICATION. (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under Section 252.034.

(b) The application must contain information that the department requires. The department may require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving the application, the department shall issue a license if, after inspection and investigation, it finds that the applicant and facility meet the requirements established under this chapter.

(b) The department may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable on the second anniversary of issuance or renewal of the license after:

(1) an inspection;

(2) filing and approval of a renewal report; and

(3) payment of the renewal fee.

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the department that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The department may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

(g) A license or renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. An increase in the amount of a fee shall be reflected in reimbursement rates prospectively.



(h) The department by rule shall define specific, appropriate, and objective criteria on which it may deny an initial license application or license renewal or revoke a license.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.034. LICENSE FEES. (a) The board by rule may adopt a fee for a license issued under this chapter. The fee may not exceed \$150 plus \$5 for each unit of capacity or bed space for which the license is sought.

(b) The license fee must be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) A facility operated by the state is not required to pay a license fee.

(d) The board may adopt an additional fee for the approval of an increase in bed space.

(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter.

(f) An applicant who submits an application for license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 19, eff. September 1, 2007.

Sec. 252.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the

matter may order in the public interest for the welfare and safety of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.036. MINIMUM STANDARDS. The board may adopt, publish, and enforce minimum standards relating to:

(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.037. REASONABLE TIME TO COMPLY. The board by rule

shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

- (1) the change is required by federal law; or
- (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 3, eff. Sept. 1, 2001.

Sec. 252.038. FIRE SAFETY REQUIREMENTS. (a) A facility shall comply with fire safety requirements established under this section.

(b) The board by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the

same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(c) A facility that is licensed under applicable law on September 1, 1997, must comply with the fire safety standards, including fire safety standards imposed by municipal ordinance, applicable to the facility on that date.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(e) Notwithstanding any other provision of this section, a municipality may enact additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 1997.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.039. POSTING. Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

- (1) the license issued under this chapter;
- (2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;
- (3) a notice in a form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the facility;
- (4) a concise summary of the most recent inspection report relating to the facility;
- (5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to the Department of Family and Protective Services; and
- (6) a notice that employees, other staff, residents,

volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 192, Sec. 3, eff. Sept. 1, 2001.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 11, eff. June 11, 2009.

Sec. 252.040. INSPECTIONS. (a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) A facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

(i) The department shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 160, Sec. 2, eff. Sept. 1, 2001.

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) The department may require additional inspections.

(d) As considered appropriate and necessary by the department, the department may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with mental retardation or a related condition.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.042. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

- (1) the department;
  - (2) the office of the attorney general;
  - (3) a representative of an agency or organization when a Medicaid survey is made concurrently with a licensing inspection; or
  - (4) any other person or entity authorized by law to make an inspection or to accompany an inspector.
- (c) An offense under this section is a Class B misdemeanor.
- (d) A person convicted under this section is not eligible for state employment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.043. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of a validation survey is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.044. REPORTING VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under this chapter shall:

- (1) list each violation of a law or rule on a form designed by the department for inspections; and
- (2) identify the specific law or rule the facility violates.

(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility and the person designated by the facility to receive notice under Section 252.066 at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final

list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 6, eff. September 1, 2007.

Sec. 252.045. ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY. Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action against a facility of:

(1) a record of the department described by Section 32.021(i), Human Resources Code; or

(2) the testimony of a department surveyor or investigator described by Section 32.021(k), Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 3.03, eff. June 15, 2001.

#### **SUBCHAPTER C. GENERAL ENFORCEMENT**

Sec. 252.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend a facility's license or order an immediate closing of part of the facility if:

(1) the department finds the facility is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the facility's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date



specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of a facility is valid for 10 days after the effective date of the order.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.062. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards prescribed by this chapter if the department finds that the violation creates an immediate threat to the health and safety of the facility's residents.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall bring and conduct on behalf of the state a suit authorized by this section.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in Travis County or the county in which the alleged violation occurs.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 192, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 252.031.

(b) An offense under this section is punishable by a fine of not more than \$1,000 for the first offense and not more than \$500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a

separate offense.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.064. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$10,000 for each violation if the department determines the violation threatens the health and safety of a resident.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 23, Sec. 1, eff. May 3, 1999.

Sec. 252.065. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by the institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this

chapter;

(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final;

(7) fails to submit a plan of correction within 10 days after receiving a statement of licensing violations; or

(8) fails to notify the department of a change in ownership before the effective date of that change of ownership.

(b) The penalty for a facility with fewer than 60 beds shall be not less than \$100 or more than \$1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than \$100 or more than \$5,000 for each violation. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(2) the history of previous violations;

(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

(e) The department by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)-(8) or to a violation that the department determines:

- (1) has resulted in serious harm to or the death of a resident;
- (2) constitutes a serious threat to the health or safety of a resident; or
- (3) substantially limits the institution's capacity to provide care.

(f) The department may not assess an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

- (1) notifies the department in writing of the correction of the violation and of the date the violation was corrected; and
- (2) shows later that the violation was corrected.

(k) Rules adopted under this section shall include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 3, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 20, eff. September 1, 2007.

Sec. 252.0651. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 4, eff. Sept. 1, 1999.

Sec. 252.066. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person designated by the facility to receive notice. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty based on the factors listed in Section 252.065(d); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner of human services or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 5, eff. Sept. 1, 1999.

Sec. 252.067. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of human services or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of human services or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 252.067(c) to the person alleged to have committed the violation and the person designated by the facility to receive notice under Section 252.066. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(2) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order becomes final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (c)(1)(A) and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person

gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.069. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 4, eff. September 1, 2005.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 252.062 or 252.064 or to enforce an administrative penalty assessed under Section 252.065 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Text of section as amended by Acts 2001, 77th Leg., ch. 619, Sec. 2

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty



to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, eff. Sept. 1, 2001.

Text of section as amended by Acts 2001, 77th Leg., ch. 1284, Sec.  
8.02

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person

receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, eff. June 15,  
2001.

#### **SUBCHAPTER D. TRUSTEES FOR FACILITIES**

Sec. 252.091. FINDINGS AND PURPOSE. (a) The legislature finds that, under some circumstances, closing a facility for a violation of a law or rule may:

(1) have an adverse effect on the facility's residents and their families; and

(2) result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.092. APPOINTMENT BY AGREEMENT. (a) A person who holds a controlling interest in a facility may request the department to assume the operation of the facility through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify the terms and conditions of the trustee's appointment and authority; and

(2) preserve the rights of the residents as granted by law.

(d) The agreement terminates at the time:

(1) specified by the parties; or

(2) either party notifies the other in writing that the party is terminating the appointment agreement.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.093. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility if:

(1) the facility is operating without a license;

(2) the department has suspended or revoked the facility's license;

(3) license suspension or revocation procedures against the facility are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing and arrangements for relocation of the residents to other licensed facilities have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the facility's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes mental retardation service administration.

(e) An action under this section must be brought in Travis County or the county in which the violation is alleged to have occurred.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 192, Sec. 2, eff. Sept. 1, 1999.

Sec. 252.094. FEE; RELEASE OF MONEY. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services

provided to the residents if the payment has been withheld, including a payment withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid or insurance;
- (2) by a third party; or
- (3) for medical expenses borne by the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.095. EMERGENCY ASSISTANCE FEE. (a) In addition to the licensing and renewal fee collected under Section 252.034, the department may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(b) The fee collected under this section shall be in the amount prescribed by Section 242.097(b) and shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

(c) The department may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Section 242.096(b).

(d) A court may order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.096. REIMBURSEMENT. (a) A facility that receives emergency assistance money under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(c) The owner of the facility when the trustee is appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the Texas Department of Mental Health and Mental Retardation may determine that the facility is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect money due under this section at the request of the department. An action under this section must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.097. NOTIFICATION OF CLOSURE. (a) A facility that is closing temporarily or permanently, voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the facility closes.

(b) If the department orders a facility to close or the facility's closure is in any other way involuntary, the facility shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the date on which the decision to close is made.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.098. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a) A facility commits an offense if the facility knowingly fails to comply with Section 252.097.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.099. COOPERATION IN FACILITY CLOSURE. The department

and the Texas Department of Mental Health and Mental Retardation shall cooperate closely to ensure that the closure and transition plans for a facility that is closing, and the execution of those plans, ensure the short-term and long-term well-being of the clients of the facility.

Added by Acts 2001, 77th Leg., ch. 160, Sec. 3, eff. Sept. 1, 2001.

**SUBCHAPTER E. INVESTIGATIONS OF ABUSE,  
NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION**

Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE.

(a) A person, including an owner or employee of a facility, who has cause to believe that a resident is being or has been subjected to abuse, neglect, or exploitation shall report the suspected abuse, neglect, or exploitation to the Department of Family and Protective Services, as required by Chapter 48, Human Resources Code, or Chapter 261, Family Code, as appropriate. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation in the manner provided by Chapter 48, Human Resources Code, or Section 261.404, Family Code, as applicable.

(b) If the department receives a report of suspected abuse, neglect, or exploitation of a resident of a facility licensed under this chapter, the department shall immediately refer the report to the Department of Family and Protective Services for investigation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.122. NOTIFICATION OF DUTY TO REPORT ABUSE, NEGLECT, AND EXPLOITATION. Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by:



Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT. Before the completion of the investigation by the Department of Family and Protective Services, the department shall file a petition for temporary care and protection of a resident if the department determines, based on information provided to the department by the Department of Family and Protective Services, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION REPORT. (a) A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only as provided by Chapter 48, Human Resources Code, Chapter 261, Family Code, or this section.

(b) The Department of Family and Protective Services shall provide a copy of a completed investigation report to the department and may disclose information related to the investigation at any time to the department as necessary to protect a resident of a facility from abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.132. SUIT FOR RETALIATION. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, the

owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines, discriminates against, or retaliates against the employee for:

(1) reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(2) initiating or cooperating in any investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(c) A plaintiff who prevails in a suit under this section may recover:

(1) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the

person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff resides;
- (2) the plaintiff was employed by the defendant; or
- (3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122. If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 192, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 14, eff. June 11, 2009.

Sec. 252.133. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

- (1) makes a complaint or files a grievance concerning the facility;
- (2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
- (3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(b) A volunteer, a resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates in violation of Subsection (a) is entitled to sue for:

- (1) injunctive relief;

(2) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 192, Sec. 5, eff. Sept. 1, 2001.

#### **SUBCHAPTER F. MEDICAL CARE**

Sec. 252.151. ADMINISTRATION OF MEDICATION. The department shall adopt rules relating to the administration of medication in facilities.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.152. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

#### **SUBCHAPTER G. RESPITE CARE**

Sec. 252.181. DEFINITIONS. In this subchapter:

(1) "Plan of care" means a written description of the care, training, and treatment needed by a person during respite care.

(2) "Respite care" means the provision by a facility to a person, for not more than two weeks for each stay in the facility, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.182. RESPITE CARE. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of mental retardation or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The board may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.183. PLAN OF CARE. (a) The facility and the person arranging the care must agree on the plan of care and the plan must be filed at the facility before the facility admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The facility may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan of care. During that period, the facility may admit the person as frequently as is needed and as accommodations are available.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.184. NOTIFICATION. A facility that offers respite care shall notify the department in writing that it offers respite

care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.186. SUSPENSION. (a) The department may require a facility to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

#### **SUBCHAPTER H. QUALITY ASSURANCE FEE**

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a

community mental health and mental retardation center, as described by Subchapter A, Chapter 534, and on each facility owned by the Texas Department of Mental Health and Mental Retardation. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.64, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 1(a), eff. June 20, 2003.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day; and

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic leave.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.65, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 2, eff. June 20, 2003.

Sec. 252.204. REPORTING AND COLLECTION. (a) The Health and Human Services Commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.66, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 3, eff. June 20, 2003.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The Health and Human Services Commission shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The Health and Human Services Commission may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of:

(1) fees deposited to the credit of the fund under this subchapter; and

(2) the earnings of the fund.



(c) Money deposited to the quality assurance fund remains the property of the fund and may be used only for the purposes of this subchapter.

(d) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) Subject to legislative appropriation and state and federal law, the Health and Human Services Commission may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;

(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(b) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1) and Acts 2003, 78th Leg., ch. 1251, Sec. 4(b).

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the Health and Human Services Commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.67, 2.156(a)(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 4(a), (b), eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.003, eff. September 1, 2005.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

#### **CHAPTER 253. EMPLOYEE MISCONDUCT REGISTRY**

Sec. 253.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Employee" means a person who:

(A) works at a facility or for an individual employer;

(B) is an individual who provides personal care services, active treatment, or any other personal services to a consumer or to an individual using the consumer-directed service option; and

(C) is not licensed by an agency of the state to perform the services the employee performs for the individual using the consumer-directed service option or at the facility or is a nurse aide employed by a facility.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means:

(A) a facility:

(i) licensed by the department; or

(ii) licensed under Chapter 252;

(B) an adult foster care provider that contracts with the department;

(C) a home and community support services agency licensed by the department under Chapter 142; or

(D) a prescribed pediatric extended care center licensed under Chapter 248A.

(4-a) "Financial management services agency" means an entity that contracts with the department to serve as a fiscal and employer agent for an individual employer using the consumer-directed service option.

(4-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring providers to deliver program services.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual using the consumer-directed service option or a consumer;

(B) sexual abuse of an individual using the consumer-directed service option or a consumer;

(C) financial exploitation of an individual using the consumer-directed service option or a consumer in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual using the consumer-directed service option or a consumer.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. [643](#)), Sec. 15, eff.

June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 4, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 4, eff. September 1, 2013.

Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the department receives a report that an employee of a facility, other than a facility licensed under Chapter 252, committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

(b) If the Department of Aging and Disability Services receives a report that an employee of a facility licensed under Chapter 252 or of an individual employer committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 16, eff. June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 5, eff. January 1, 2014.

Sec. 253.003. DETERMINATION; NOTICE. (a) If, after an investigation, the department determines that the reportable conduct occurred, the department shall give written notice of the department's findings. The notice must include:

- (1) a brief summary of the department's findings; and
- (2) a statement of the person's right to a hearing on the occurrence of the reportable conduct.

(b) Not later than the 30th day after the date on which the notice is received, the employee notified may accept the determination of the department made under this section or may make a

written request for a hearing on that determination.

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the reportable conduct be recorded in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 8, eff. Sept. 1, 2001.

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee;

and

- (3) designate a hearings examiner to conduct the hearing.

(a-1) The department must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that the reportable conduct has occurred. If the commissioner or the commissioner's designee finds that the reportable conduct has occurred, the commissioner or the commissioner's designee shall issue an order approving the determination.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. [2683](#)), Sec. 6, eff. January 1, 2014.

Sec. 253.005. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 253.004 to the employee alleged to have committed the reportable conduct. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct will be recorded in the registry under Section 253.007 if:

(A) the employee does not request judicial review of the determination; or

(B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the determination, the department shall record the reportable conduct in the registry under Section 253.007.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall record the reportable conduct in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 10, eff. Sept. 1, 2001.

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250 and the entry is subsequently removed from the nurse aide registry, the commissioner or the commissioner's designee shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

Added by Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 9, eff.

June 19, 2009.

Sec. 253.006. INFORMAL PROCEEDINGS. The executive commissioner by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 10, eff. June 19, 2009.

Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. (a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility or of an individual employer has committed reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility or individual employer, the address of the facility or individual employer, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(c) The department shall make the registry available to the public.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 11, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 7, eff. January 1, 2014.

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. On receipt of a finding of an employee's reportable conduct by the Department of Family and Protective Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry in accordance with Section 253.007.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 12, eff. June 19, 2009.

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH.

(a) Before a facility or individual employer as defined in this chapter or an agency as defined in Section 48.401, Human Resources Code, may hire an employee, the individual employer or a financial management services agency on behalf of the individual employer, the facility, or agency shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(b) A facility, individual employer or financial management services agency on behalf of an individual employer, or agency may not employ a person who is listed in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(c) In addition to the initial verification of employability, a facility, agency, individual employer, or financial management services agency on behalf of an individual employer shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the individual employer, facility, or applicable agency is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer; and

(2) maintain in the facility's or individual employer's



books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.68, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 13, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 8, eff. January 1, 2014.

Sec. 253.009. NOTIFICATION. (a) Each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, shall notify its employees in a manner prescribed by the Department of Aging and Disability Services:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.69, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 23, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 14, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 9, eff. January 1, 2014.

Sec. 253.010. REMOVAL FROM REGISTRY. The department may remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee

misconduct registry.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.

**CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Emergency care" has the meaning assigned by Sections 843.002 and 1301.155, Insurance Code.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a freestanding emergency medical care facility.

(5) "Freestanding emergency medical care facility" means a facility, structurally separate and distinct from a hospital that receives an individual and provides emergency care, as defined by Subsection (2).

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. [1357](#)), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER B. LICENSING**

Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by Section 254.052, a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued under this chapter.

(b) Except as provided by Section 254.052, a facility or person may not hold itself out to the public as a freestanding emergency medical care facility or use any similar term, as defined by department rule, that would give the impression that the facility or person is providing emergency care unless the facility or person holds a license issued under this chapter. The use of the term "emergency" or a similar term is also subject to Section 254.152.

(c) Each separate facility location must have a separate license.

(d) A license issued under this chapter is not transferable or assignable.

(e) The executive commissioner by rule shall establish a classification for a facility that is in continuous operation 24 hours per day and 7 days per week and a classification for a facility that is in operation 7 days per week and at least 12 hours per day.

(f) Notwithstanding Section 254.053(f), a facility that is not in continuous operation 24 hours per day and 7 days per week cannot be issued a license with a term that extends beyond August 31, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 1, eff. September 1, 2011.

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

- (1) an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors;
- (2) temporary emergency clinics in disaster areas;
- (3) an office or clinic of a licensed physician, dentist, optometrist, or podiatrist;
- (4) a licensed nursing home;
- (5) a licensed hospital;
- (6) a hospital that is owned and operated by this state;
- (7) a facility located within or connected to a hospital described by Subsection (5) or (6);
- (8) a facility that is owned or operated by a hospital described by Subsection (5) or (6) and is:
  - (A) surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services; or
  - (B) granted provider-based status by the Centers for Medicare and Medicaid Services; or
- (9) a licensed ambulatory surgical center.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner.

(c) The application must contain evidence that there is at least one physician and one nurse on the staff of the facility who are licensed by the appropriate state licensing board.

(d) The application must contain evidence that the facility meets the minimum standards and requirements specified in Section 254.151.

(e) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

(f) The license fee must be paid on renewal of the license. The term of a license issued under this chapter is two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES**

Sec. 254.101. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.102. FEES. The executive commissioner shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.103. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER D. REGULATION OF FACILITIES**

Sec. 254.151. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including minimum standards for:

- (1) the construction and design of the facility, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;
- (2) the number, qualifications, and organization of the professional staff and other personnel;
- (3) the administration of the facility;
- (4) the equipment essential to the health and welfare of the patients;
- (5) the sanitary and hygienic conditions within the facility and its surroundings;
- (6) the requirements for the contents, maintenance, and release of medical records;
- (7) the minimal level of care and standards for denial of care;

- (8) the provision of laboratory and radiological services;
- (9) the distribution and administration of drugs and controlled substances;
- (10) a quality assurance program for patient care;
- (11) disclosure, if applicable, of the following:
  - (A) the name and social security number of the sole proprietor, if the facility is a sole proprietor;
  - (B) the name and social security number of each general partner who is an individual, if the facility is a partnership;
  - (C) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation; and
  - (D) the name and license numbers of any physicians licensed by the Texas Medical Board who have a financial interest in the facility or any entity which has an ownership interest in the facility;
- (12) transfer protocols for patients requiring advanced medical care at a hospital; and
- (13) any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the facility's patients and the public.

(b) In adopting the rules required under Subsection (a) concerning transfer protocols, the executive commissioner must consult with physicians who provide emergency care, medical consultant organizations, and organizations representing hospitals licensed in this state.

(c) The minimum standards under this section shall apply to facilities operating 24 hours a day and 7 days per week and facilities operating less than 24 hours a day and 7 days per week.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. [1357](#)), Sec. 1, eff. September 1, 2009.

Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility shall provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and any

necessary stabilizing treatment.

(b) Before a facility accepts any patient for treatment or diagnosis, the facility shall enter into a referral, transmission, or admission agreement with a hospital licensed in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.154. COMPLAINTS. A person may file a complaint with the department against a facility licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER E. ENFORCEMENT AND PENALTIES**

Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility remains under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Sec. 254.202. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension under this section is effective immediately without a hearing on notice to the license holder.

(c) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Sec. 254.203. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of a facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.



(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 254.051.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2010.

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.206 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;  
(2) state the amount of the recommended penalty; and  
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of state health services by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the commissioner of state health services shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of state health services a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of state health services by order may:

(1) find that a violation occurred and impose a penalty; or  
(2) find that a violation did not occur.

(l) The notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. [1357](#)), Sec. 1,

eff. March 1, 2010.

Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the commissioner of state health services under Section 254.205(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the executive commissioner by certified mail.

(c) If the commissioner of state health services receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgement of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

**CHAPTER 255. QUALITY ASSURANCE EARLY WARNING SYSTEM FOR LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS**

Sec. 255.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility for the mentally retarded licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:

(A) is employed by the department;

(B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and

evaluation of patient care; and

(C) functions independently of other divisions of the department.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 1, eff. September 1, 2005.

Sec. 255.002. EARLY WARNING SYSTEM. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Sec. 255.003. QUALITY-OF-CARE MONITORS. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, aperiodic basis, including nights, evenings, weekends, and holidays. A monitoring visit conducted under this chapter may be announced or unannounced.

(b) Priority for monitoring visits shall be given to long-term care facilities with a history of patient care deficiencies.

(c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.

(d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.

(e) Quality-of-care monitors shall assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to

patient care.

(f) The quality-of-care monitor shall include in a monitoring visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.

(h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 2, eff. September 1, 2005.

Sec. 255.004. RAPID RESPONSE TEAMS. (a) The department shall create rapid response teams composed of health care experts that can visit long-term care facilities identified through the department's early warning system.

(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Sec. 255.005. REPORT. The department shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, the lieutenant governor, and the speaker of the house of representatives.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

#### **CHAPTER 256. SAFE PATIENT HANDLING AND MOVEMENT PRACTICES**

Sec. 256.001. DEFINITIONS. In this chapter:

(1) "Hospital" means a general or special hospital, as defined by Section 241.003, a private mental hospital licensed under Chapter 577, or another hospital that is maintained or operated by the state.

(2) "Nursing home" means an institution licensed under Chapter 242.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

Sec. 256.002. REQUIRED SAFE PATIENT HANDLING AND MOVEMENT POLICY. (a) The governing body of a hospital or the quality assurance committee of a nursing home shall adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement

of a patient.

(b) The policy shall establish a process that, at a minimum, includes:

(1) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital or nursing home and the physical environment in which patient handling and movement occurs;

(2) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(3) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(5) collaboration with and annual report to the nurse staffing committee;

(6) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(7) submission of an annual report to the governing body or the quality assurance committee on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(8) in developing architectural plans for constructing or remodeling a hospital or nursing home or a unit of a hospital or nursing home in which patient handling and movement occurs, consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

## CHAPTER 257. NURSE STAFFING



Sec. 257.001. DEFINITIONS. In this chapter:

- (1) "Committee" means a nurse staffing committee required by this chapter.
- (2) "Department" means the Department of State Health Services.
- (3) "Hospital" means:
  - (A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or
  - (B) a mental hospital licensed under Chapter 577.
- (4) "Patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature finds that:

- (1) research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment;
- (2) nurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity;
- (3) nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and
- (4) hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, the legislature intends to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The

governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The policy must include a process for:

- (1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;
- (2) adopting, implementing, and enforcing an official nurse services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;
- (3) using the official nurse services staffing plan as a component in setting the nurse staffing budget;
- (4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;
- (5) protecting from retaliation nurses who provide input to the committee; and
- (6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission relating to nurse staffing.

(b) The official nurse services staffing plan adopted under Subsection (a) must:

- (1) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;
- (2) set minimum staffing levels for patient care units that are:
  - (A) based on multiple nurse and patient considerations;and
  - (B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards;
- (3) include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and
- (4) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) The hospital shall:

- (1) use the official nurse services staffing plan:
  - (A) as a component in setting the nurse staffing

budget; and

(B) to guide the hospital in assigning nurses hospital-wide; and

(2) make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital shall establish a nurse staffing committee as a standing committee of the hospital.

(b) The committee shall be composed of members who are representative of the types of nursing services provided in the hospital.

(c) The chief nursing officer of the hospital is a voting member of the committee.

(d) At least 60 percent of the members of the committee must be registered nurses who:

(1) provide direct patient care during at least 50 percent of their work time; and

(2) are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) The committee shall meet at least quarterly.

(f) Participation on the committee by a hospital employee as a committee member is part of the employee's work time, and the hospital shall compensate that member for that time accordingly. The hospital shall relieve a committee member of other work duties during committee meetings.

(g) The committee shall:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(h) In evaluating the effectiveness of the official nurse services staffing plan, the committee shall consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT.

(a) A hospital shall annually report to the department on:

(1) whether the hospital's governing body has adopted a nurse staffing policy as required by Section 257.003;

(2) whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section;

(3) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and

(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(b) Information reported under Subsection (a) is public information.

(c) To the extent possible, the department shall collect the data required under Subsection (a) as part of a survey required by the department under other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

**CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED**

Sec. 258.001. DEFINITIONS. In this chapter:

(1) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(2) "Nurse" means a registered nurse or vocational nurse licensed under Chapter 301, Occupations Code.

(3) "On-call time" means time spent by a nurse who is not working but who is compensated for availability.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.002. MANDATORY OVERTIME. For purposes of this chapter, "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(b) This section does not prohibit a nurse from volunteering to work overtime.

(c) A hospital may not use on-call time as a substitute for mandatory overtime.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that:

(A) does not regularly occur;

(B) increases the need for health care personnel at the hospital to provide safe patient care; and

(C) could not prudently be anticipated by the hospital;

or

(4) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

(b) If a hospital determines that an exception exists under Subsection (a)(3), the hospital shall, to the extent possible, make a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.005. RETALIATION PROHIBITED. A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

**CHAPTER 259. SURGICAL TECHNOLOGISTS  
AT HEALTH CARE FACILITIES**

Sec. 259.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Surgical technologist" means a person who practices surgical technology.

(3) "Surgical technology" means intraoperative surgical patient care as follows:

(A) preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(B) preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(C) anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure;

(D) as directed in an operating room setting, performing the following tasks at the sterile field:

(i) passing supplies, equipment, or instruments;

(ii) sponging or suctioning an operative site;

(iii) preparing and cutting suture material;

(iv) transferring and pouring irrigation fluids;

(v) transferring but not administering drugs within the sterile field;

(vi) handling specimens;

(vii) holding retractors and other instruments;

(viii) applying electrocautery to clamps on bleeders;

(ix) connecting drains to suction apparatus;

(x) applying dressings to closed wounds; and

(xi) assisting in counting sponges, needles, supplies, and instruments with the registered nurse circulator;

(E) cleaning and preparing instruments for sterilization on completion of the surgery; and

(F) assisting the surgical team with cleaning of the operating room on completion of the surgery.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

## Sec. 259.002. REQUIREMENTS FOR PRACTICING SURGICAL TECHNOLOGY.

(a) A health care facility licensed by the department under this subtitle or owned or operated by the state may not employ a person to practice surgical technology in that health care facility unless that person provides evidence that the person:

(1) has successfully completed an accredited educational program for surgical technologists and holds and maintains certification as a surgical technologist by:

(A) the National Board of Surgical Technology and Surgical Assisting or its successor;

(B) the National Center for Competency Testing or its successor; or

(C) another surgical technologist certification program approved by the department;

(2) has completed an appropriate training program for surgical technology in the army, navy, air force, marine corps, or coast guard of the United States or in the United States Public Health Service;

(3) was employed to practice surgical technology in a health care facility before September 1, 2009; or

(4) is in the service of the federal government, to the extent the person is performing duties related to that service.

(b) Notwithstanding Subsection (a), a health care facility may employ a person to practice surgical technology at that health care facility from the date the person graduates from an accredited educational program for surgical technologists until the 180th day after the date of graduation. The person may not continue to practice surgical technology after the 180th day after the date of graduation without showing documentation to the health care facility that the person holds and maintains the surgical technologist certification required by Subsection (a)(1).

(c) Notwithstanding Subsection (a), a health care facility may employ a surgical technologist who does not meet the requirements of this section if:

(1) after a diligent and thorough effort has been made, the health care facility is unable to employ a sufficient number of qualified surgical technologists who meet the requirements of this section; and

(2) the health care facility makes a written record of its efforts under Subdivision (1) and retains the record at the health



care facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.003. SUPERVISION OF SURGICAL TECHNOLOGISTS. This chapter does not repeal or modify any law relating to the supervision of surgical technologists.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.004. OTHER LICENSED PRACTITIONERS. This chapter does not prohibit a licensed practitioner from performing a task or function within the scope of the practitioner's license.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.005. APPLICABILITY. This chapter does not apply to:

(1) a licensed registered nurse or a licensed vocational nurse; or

(2) the employment by a health care facility of an individual whose primary functions include the cleaning or sterilization of supplies, instruments, equipment, or operating rooms.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.006. ENFORCEMENT. (a) The department may adopt rules to administer and enforce this chapter.

(b) A health care facility that violates Section 259.002 is subject to an administrative penalty, a civil penalty, or other disciplinary action, as applicable, in the same manner as if the facility violated the chapter under which the facility is licensed.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

#### CHAPTER 260. BOARDING HOME FACILITIES

Sec. 260.001. DEFINITIONS. In this chapter:

(1) "Assistance with self-administering medication" means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

(2) "Boarding home facility" means an establishment that:

(A) furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

(B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined by Section 247.002 to those persons.

(3) "Commission" means the Health and Human Services Commission.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(7) "Resident" means a person who is residing in a boarding home facility.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.002. EXEMPTIONS. This chapter does not apply to:

(1) a person that is required to be licensed under Chapter 142, 242, 246, 247, or 252;

(2) a person that is exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4);

- (3) a hotel as defined by Section 156.001, Tax Code;
- (4) a retirement community;
- (5) a monastery or convent;
- (6) a child-care facility as defined by Section 42.002, Human Resources Code;
- (7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or
- (8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.003. MODEL STANDARDS. The executive commissioner shall develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

- (1) the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
- (2) sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;
- (3) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;
- (4) assistance with self-administering medication;
- (5) requirements for in-service education of the facility's staff;
- (6) criminal history record checks; and
- (7) assessment and periodic monitoring to ensure that a resident:
  - (A) does not require the boarding home facility to provide personal care, nursing, or other services not listed in Section 260.001(2); and
  - (B) is capable of self-administering medication or is aware of what the resident's medications look like and knows when the

medications should be taken but requires assistance with self-administering medication.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Redesignated and amended from Health and Safety Code, Section 254.003 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(6), eff. September 1, 2011.

Sec. 260.004. LOCAL REGULATION. A county or municipality may require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. A county or municipality may adopt the standards developed by the executive commissioner under Section 260.003 and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Redesignated and amended from Health and Safety Code, Section 254.004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(7), eff. September 1, 2011.

Sec. 260.005. PERMIT PROCEDURES; FEES; FINES. (a) A county or municipality that requires a person to obtain a boarding home facility permit as authorized by Section 260.004 may establish procedures for the submission of a boarding home facility permit application and for the issuance, denial, renewal, suspension, and revocation of the permit.

(b) A county or municipality that requires a person to obtain a boarding home facility permit as authorized under Section 260.004 may set reasonable fees for issuance of the permit, renewal of the permit, and inspections and may impose fines for noncompliance with the county or municipal boarding home facility regulations. The fees collected and fines imposed by the county or municipality must be used to administer the county or municipal permitting program or for

other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities.

(c) A person required to obtain a boarding home facility permit from a county or municipality as authorized under Section 260.004 shall pay any fees required or fines imposed by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Redesignated and amended from Health and Safety Code, Section 254.005 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(8), eff. September 1, 2011.

Sec. 260.006. POSTING. A boarding home facility that holds a permit issued by a county or municipality shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents, the operator, employees, and visitors:

- (1) the permit issued by a county or municipality;
- (2) a sign prescribed by the county or municipality that issued the permit that specifies how complaints may be registered with the county or municipality;
- (3) a notice in a form prescribed by the county or municipality that issued the permit stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility;
- (4) a concise summary of the most recent inspection report relating to the boarding home facility; and
- (5) a notice in a form prescribed by the county or municipality that issued the permit that lists the name, location, and contact information for:
  - (A) the closest local public health services agency in the proximity of the boarding home facility; and
  - (B) a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting

emergencies to the organization or entity.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.007. INSPECTIONS. (a) A county or municipality may conduct any inspection, survey, or investigation that it considers necessary and may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation.

(b) A county or municipality is entitled to access to books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards adopted by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.008. INTERLOCAL COOPERATION. Two or more counties or municipalities may cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.009. REPORTING AND INVESTIGATION OF ABUSE, NEGLECT, OR EXPLOITATION. (a) A person, including an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability is being or has been abused, neglected, or exploited shall report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation as authorized and in the manner provided by Chapter 48, Human Resources Code.

(b) Each boarding home facility that holds a permit issued by a county or municipality shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement that the employee acknowledges that the employee may be criminally liable under Section 48.052, Human Resources Code, for failure to report abuse, neglect, or exploitation.

(c) An owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality may not retaliate against an employee of the facility who in good faith makes a complaint to the office of the inspector general of the Health and Human Services Commission, cooperates with the office of the inspector general in an investigation, or reports abuse, neglect, or exploitation of a resident to the Department of Family and Protective Services.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE REPORT.

(a) Not later than September 30 of each year following the establishment of a county or municipal permitting requirement under this chapter, each county or municipality that requires a person to obtain a boarding home facility permit under Section 260.004 shall submit to the commission a report. The report must include:

(1) the total number of:

(A) boarding home facilities permitted during the preceding state fiscal year;

(B) boarding home facility applications denied permitting, including a summary of cause for denial; and

(C) boarding home facility permits active on August 31 of the preceding state fiscal year;

(2) the total number of residents reported housed in each boarding home facility reported;

(3) the total number of inspections conducted at each boarding home facility by the county or municipality that requires the permit; and

(4) the total number of permits revoked or suspended as a

result of an inspection described by Subdivision (3) and a summary of the outcome for the residents displaced by revocation or suspension of a permit.

(b) The commission shall establish and maintain a standardized compilation of information reported under this section and provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(9), eff. September 1, 2011.

Sec. 260.011. EXCLUSION PROHIBITED. If an entity meets the requirements established by a county or municipality under this chapter, the entity may not be excluded from a residential area by zoning ordinances or similar regulations.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

**CHAPTER 260A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RESIDENTS OF CERTAIN FACILITIES**

Sec. 260A.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(B) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.



(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Exploitation" means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(5) "Facility" means:

(A) an institution as that term is defined by Section 242.002;

(B) an assisted living facility as that term is defined by Section 247.002; and

(C) a prescribed pediatric extended care center as that term is defined by Section 248A.001.

(6) "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(7) "Resident" means an individual, including a patient, who resides in or receives services from a facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 5, eff. September 1, 2013.

Sec. 260A.002. REPORTING OF ABUSE, NEGLECT, AND EXPLOITATION.

(a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person shall report the abuse, neglect, or exploitation in accordance with this chapter.

(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral report immediately on learning of the abuse, neglect, or exploitation and shall make a written report to the department not later than the fifth day after the oral report is made.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.003. CONTENTS OF REPORT. (a) A report of abuse, neglect, or exploitation is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused, neglected, or exploited or has died of abuse or neglect.

(b) The report must contain:

- (1) the name and address of the resident;
- (2) the name and address of the person responsible for the care of the resident, if available; and
- (3) other relevant information.

(c) Except for an anonymous report under Section 260A.004, a report of abuse, neglect, or exploitation under Section 260A.002 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number, address, and name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the facility, or to an owner or agent of the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION. (a) An anonymous report of abuse, neglect, or exploitation, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse, neglect, or exploitation need not be investigated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS. (a) The department shall operate the department's telephone hotline to:

- (1) receive reports of abuse, neglect, or exploitation; and
- (2) dispatch investigators.

(b) A report of abuse, neglect, or exploitation shall be made to the department's telephone hotline or to a local or state law enforcement agency. A report made relating to abuse, neglect, or exploitation or another complaint described by Section 260A.007(c)(1) shall be made to the department's telephone hotline and to the law enforcement agency described by Section 260A.017(a).

(c) Except as provided by Section 260A.017, a local or state law enforcement agency that receives a report of abuse, neglect, or exploitation shall refer the report to the department.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.006. NOTICE. (a) Each facility shall prominently and conspicuously post a sign for display in a public area of the facility that is readily available to residents, employees, and visitors.

(b) The sign must include the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING (insert telephone hotline number).

(c) A facility shall provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a) The department shall make a thorough investigation after receiving an oral or written report of abuse, neglect, or exploitation under Section 260A.002 or another complaint alleging abuse, neglect, or exploitation.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The department shall begin the investigation:

(1) within 24 hours after receipt of the report or other allegation, if the report of abuse, neglect, exploitation, or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse, neglect, exploitation, or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse, neglect, or exploitation and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse, neglect, exploitation, or other complaint, the investigator for the department shall:

(1) make an unannounced visit to the facility to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;

(2) interview each available witness, including the resident who suffered the alleged abuse, neglect, or exploitation if the resident is able to communicate or another resident or other

witness identified by any source as having personal knowledge relevant to the report of abuse, neglect, exploitation, or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse, neglect, exploitation, or other complaint and that may be objectively observed;

(4) make a photographic record of any injury to a resident, subject to Subsection (n); and

(5) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse, neglect, or exploitation and any other resident interviewed in the investigation; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:

(A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;

(B) the person making the report of abuse, neglect, exploitation, or other complaint; and

(C) an individual interviewed in the investigation;

and

(2) photographs of any injury to the resident.

(h) In the investigation, the department shall determine:

(1) the nature, extent, and cause of the abuse, neglect, or exploitation;

(2) the identity of the person responsible for the abuse,

neglect, or exploitation;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the facility environment; and

(6) any other information required by the department.

(i) If the department attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where the resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) Before the completion of the investigation, the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

(k) The department shall make a complete final written report of the investigation and submit the report and its recommendations to the district attorney and, if a law enforcement agency has not investigated the report of abuse, neglect, exploitation, or other complaint, to the appropriate law enforcement agency.

(l) Within 24 hours after receipt of a report of abuse, neglect, exploitation, or other complaint described by Subsection (c)(1), the department shall report the report or complaint to the law enforcement agency described by Section 260A.017(a). The department shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 260A.017.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 260A.017 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 260A.017.

(n) If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

(1) shall seek to obtain any required consent; and

(2) may not make the photographic record unless the consent

is obtained.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.008. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this chapter and the name, address, and phone number of any person making a report under this chapter are confidential and may be disclosed only for purposes consistent with rules adopted by the executive commissioner. The report, record, or working paper and the name, address, and phone number of the person making the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse, neglect, exploitation, or other complaint in accordance with Section 260A.017.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.009. IMMUNITY. (a) A person who reports as provided by this chapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.010. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse, neglect, or exploitation of a resident or the cause of any abuse, neglect, or exploitation, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c),

eff. September 28, 2011.

Sec. 260A.011. CENTRAL REGISTRY. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse, neglect, or exploitation.

(b) The executive commissioner may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse, neglect, or exploitation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation and knowingly fails to report in accordance with Section 260A.002.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.013. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. (a) A person commits an offense if the person reports under this chapter in bad faith, maliciously, or recklessly.

(b) An offense under this section is a Class A misdemeanor.

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for



compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, or the owner or another employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(c) The petitioner may recover:

(1) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse, neglect, or exploitation if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff resides;
- (2) the plaintiff was employed by the defendant; or
- (3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 260A.002. If a facility does not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may not retaliate or discriminate against a volunteer, resident, or family member or guardian of a resident because the volunteer, resident, resident's family member or guardian, or any other person:

- (1) makes a complaint or files a grievance concerning the facility;
- (2) reports a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247; or
- (3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(b) A volunteer, resident, or family member or guardian of a resident who is retaliated or discriminated against in violation of Subsection (a) is entitled to sue for:

- (1) injunctive relief;
- (2) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
- (3) exemplary damages;
- (4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, resident, or family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, resident, or family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.016. REPORTS RELATING TO DEATHS OF RESIDENTS OF AN INSTITUTION. (a) In this section, "institution" has the meaning assigned by Section 242.002.

(b) An institution shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted not later than the 10th day after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(c) The institution must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(d) The department shall correlate reports under this section with death certificate information to develop data relating to the:

- (1) name and age of the deceased;
- (2) official cause of death listed on the death certificate;
- (3) date, time, and place of death; and
- (4) name and address of the institution in which the deceased resided.

(e) Except as provided by Subsection (f), a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

(f) The department shall develop statistical information on official causes of death to determine patterns and trends of

incidents of death among residents and in specific institutions. Information developed under this subsection is public.

(g) A licensed institution shall make available historical statistics on all required information on request of an applicant or applicant's representative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.017. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION.

(a) The department shall investigate a report of abuse, neglect, exploitation, or other complaint described by Section 260A.007(c)(1) jointly with:

(1) the municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(2) the sheriff's department of the county in which the facility is located, if the facility is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse, neglect, exploitation, or other complaint and begin the joint investigation required by this section within 24 hours after receipt of the report or complaint. The law enforcement agency shall cooperate with the department and report to the department the results of the investigation.

(c) The requirement that the law enforcement agency and the department conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

**SUBTITLE C. LOCAL HOSPITALS**

**CHAPTER 261. MUNICIPAL HOSPITALS**

**SUBCHAPTER A. TYPE A GENERAL-LAW MUNICIPALITIES**

Sec. 261.001. REGULATION OF HOSPITALS BY TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law

municipality may:

- (1) construct or establish one or more hospitals and control and regulate those hospitals; and
- (2) prohibit or permit and regulate the establishment of private hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. SALE, LEASE, OR CLOSURE OF MUNICIPAL HOSPITAL**

Sec. 261.011. AUTHORITY OF GOVERNING BODY. (a) The governing body of a municipality by ordinance may order the sale, lease, or closure of all or part of a hospital owned and operated by the municipality, including real property. The ordinance must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the municipality.

(b) A sale or closure may not take effect before the expiration of the period in which a petition may be filed under Section 261.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.012. SALE OR CLOSURE PETITION; ELECTION. (a) The governing body shall order and conduct an election on the sale or closure of a hospital if, before the 31st day after the date the governing body orders the sale or closure, the governing body receives a petition signed by at least 10 percent of the qualified voters of the municipality requesting the election.

(b) If a petition is filed under Subsection (a), the sale or closure is contingent on voter approval. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed. The number of qualified voters of the municipality is determined according to the most recent official list of qualified voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.013. FORM AND TERMS OF LEASE IN MUNICIPALITY OF 25,000 OR LESS. (a) The governing body of a municipality with a population of 25,000 or less may lease all or part of a hospital owned by the

municipality for operation by the lessee as a public hospital under terms that are satisfactory to the governing body and the lessee. The term of the lease may not exceed 50 years.

(b) The lease must:

(1) be authorized by ordinance or resolution adopted by the governing body;

(2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk; and

(3) have the seal of the municipality impressed on the lease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR**

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality or municipal hospital authority.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality or a municipal hospital authority is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

**CHAPTER 262. MUNICIPAL HOSPITAL AUTHORITIES****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 262.001. SHORT TITLE. This chapter may be cited as the Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.002. DEFINITIONS. In this chapter:

(1) "Authority" means a hospital authority created under this chapter.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a note.

(4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(5) "Governing body" means the governing body of a municipality.

(6) "Hospital" means a hospital project as defined by Section 223.002.

(7) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of, or creating a mortgage lien on, properties to secure revenue bonds issued by an authority.

(8) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.003. CREATION. (a) A governing body may adopt an ordinance creating a hospital authority and designating the name of the authority if the governing body finds that creation of the authority is in the best interest of the municipality and its residents.

(b) The governing bodies of two or more municipalities may each adopt an ordinance creating a hospital authority that includes those municipalities and designating the name of the authority if the governing bodies find that creation of the authority is in the best interest of the municipalities.

(c) The authority is composed only of the territory in each municipality in the authority.

- (d) The authority is a body politic and corporate.
- (e) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.004. TAX EXEMPTION. The authority's property is exempt from taxation because it is held for public purposes only and devoted exclusively to the use and benefit of the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.005. DISSOLUTION. (a) A governing body by ordinance may dissolve an authority created by the governing body if the governing body and the authority provide for the sale or transfer of the authority's assets and liabilities to the municipality or to another person.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

(1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

(2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.

(c) Except as otherwise provided by this section, an ordinance dissolving an authority takes effect on the 31st day after the date the governing body adopts the ordinance.

(d) If before the ordinance takes effect the municipality receives a petition requesting a referendum on the dissolution that is signed by a number of registered voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election, the ordinance does not take effect and the governing body shall order the election.

(e) Section 41.001(a), Election Code, requiring an election to be held on a uniform election date, does not apply to an election under this section. The ballot shall be printed to provide for voting for or against the proposition: "Dissolution of the (name of the authority)."

(f) If a majority of the votes in the election are cast in favor of the proposition, the ordinance takes effect on a date stated in the order declaring the results of the election. If a majority of



the votes in the election are cast against the proposition, the ordinance does not take effect and the governing body may not adopt an ordinance dissolving the authority before the first anniversary of the date of the election. That ordinance is also subject to the petition and election requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. BOARD OF DIRECTORS**

Sec. 262.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the ordinance or ordinances creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The governing body or governing bodies shall appoint the directors of the authority for terms not to exceed two years except as otherwise provided by this section. If the authority includes more than one municipality, each governing body shall appoint an equal number of directors unless the governing bodies agree otherwise.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The governing body or governing bodies shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a

hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) If the authority is financed under Chapter 223, the governing body or governing bodies by ordinance may require the board to submit nominees for appointment to the board. If a nominee is rejected by the governing body or governing bodies, the board shall submit another nominee. The governing body or governing bodies shall select the directors from the nominees submitted by the board and any other nominee submitted by a member of a governing body. The governing body or governing bodies may also limit the number of successive terms that a director may serve.

(f) An officer or employee of a municipality in the authority is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.013. OFFICERS. (a) The board shall elect:

- (1) a president and a vice-president, who must be directors;
- (2) a secretary and a treasurer, who are not required to be directors; and
- (3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 262.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

- (1) have a seal;
- (2) sue and be sued; and
- (3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS.

(a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals. A hospital may be located outside the municipality or municipalities.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital, or part of a hospital, owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0225. AUTHORITY TO BORROW MONEY. (a) This section applies only to an authority created by a municipality with a

population of less than 25,000.

(b) The board may, on behalf of the authority, borrow money from a federally insured lending institution for any of the authority's purposes.

(c) The board may borrow money in the amount it considers advisable subject to a rate of interest and other terms and conditions it considers advisable.

(d) A loan for which bonds are pledged shall mature not later than the first anniversary of the date on which the loan is made.

Added by Acts 1995, 74th Leg., ch. 740, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 2003, 78th Leg., ch. 702, Sec. 1, eff. June 20, 2003.

Sec. 262.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.024. MANAGEMENT AGREEMENT. (a) The board may enter into an agreement with any person for the management or operation of a hospital, or part of a hospital, owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the authority to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the authority to:

- (1) issue bonds;
- (2) make or amend a lease of a hospital or a management agreement relating to a hospital; or
- (3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources the board shall produce revenue sufficient to:

- (1) pay the expenses of owning, operating, and maintaining the hospital;
- (2) pay the interest on the bonds as it becomes due;
- (3) create a sinking fund to pay the bonds as they become due; and
- (4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient with the nonprofit corporation's or lessee's other sources of revenue to:

- (1) pay the expenses of operating and maintaining the hospital; and
- (2) make payments or pay rentals to the authority that are sufficient with the authority's other pledged sources of estimated revenue to:

- (A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a municipality may select a depository under Chapter 105, Local Government Code; or

(2) award its depository contract to the depository or depositories selected as the depository or depositories of the municipality or municipalities in the authority and on the same terms as the terms of the municipal depository agreement or agreements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.030. MEDICAL RECORDS. (a) The preservation,

microfilming, destruction, or other disposition of the records of the authority is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the Texas Department of Health and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 116, eff. Sept. 1, 1991.

Sec. 262.031. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority;

(2) prior restrictions placed on the use of the property;  
or

(3) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board shall provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board shall publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in each municipality in the authority. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.032. SALE OF PROPERTY TO POLITICAL SUBDIVISION. (a) The authority may sell property to a political subdivision for the fair market value of the property.

(b) The board must publish a notice of its intention to sell, a

description of the property, and the scheduled date of sale in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 15th day before the scheduled sale date.

(c) A petition requesting an election on the question of the sale, signed by at least 10 percent of the qualified voters residing in the authority, may be presented to the secretary or president of the board before the scheduled sale date.

(d) The board shall order the election on receiving the petition. If no petition is filed, the board may sell the property without an election or may order an election on its own motion. The order must contain the same information contained in the notice of the election under Subsection (f).

(e) Section 41.001(a), Election Code, requiring elections to be held on uniform election dates, does not apply to the election.

(f) In addition to the contents of the notice required by the Election Code, the notice must state the names of the presiding judge, alternate judge, and clerks for each polling place. The board shall publish notice of the election in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 31st day before election day.

(g) The ballot shall be printed to provide for voting for or against the proposition: "The sale of \_\_\_\_\_ by the \_\_\_\_\_ Hospital Authority."

(h) If a majority of qualified voters who vote in the election favor the sale, the board may sell the property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.033. SALE OR CLOSING OF HOSPITAL. (a) The board may sell a hospital, or part of a hospital, owned by the authority or close a hospital, or part of a hospital, owned or operated by the authority. The sale or closure must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) be made by a document having the seal of the authority impressed on it.



(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the authority. The number of qualified voters is determined according to the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0331. EXPENDITURE OF FUNDS FOR PUBLIC HEALTH INITIATIVES AFTER SALE OR CLOSING OF HOSPITAL. (a) If, after the sale or closing of a hospital under Section 262.033, the authority does not own or operate a hospital, the board may use the authority's available assets to promote public health and general welfare initiatives that the board determines will benefit the residents served by the authority, including:

(1) owning, operating, or funding an indigent health care clinic, medical research facility, medical training facility, or other health care facility;

(2) providing direct or indirect financial assistance to a nonprofit organization that:

(A) owns or operates a hospital, indigent health care clinic, medical research facility, medical training facility, or other health care facility; or

(B) supports an initiative promoting health education, wellness, or disease prevention; and

(3) undertaking any other activity that the board determines is necessary or appropriate to improve public health, promote wellness, prevent disease, or enhance the general welfare of the residents served by the authority.

(b) The board may not make an expenditure under Subsection (a) unless:

(1) the board makes appropriate provisions for the

satisfaction of any outstanding bonds, debt obligations, or other liabilities of the authority;

(2) the predominant purpose of the expenditure is to promote the public health and general welfare of the residents served by the authority; and

(3) the board establishes sufficient controls to ensure that the expenditure promotes the public health and general welfare of the residents served by the authority.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.

Sec. 262.034. FACILITIES AND SERVICES FOR ELDERLY AND DISABLED.

(a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

- (1) a nursing home or similar long-term care facility;
- (2) elderly housing;
- (3) assisted living;
- (4) home health;
- (5) personal care;
- (6) special care;
- (7) continuing care; and
- (8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement relating to all or part of a facility or service for the care of the elderly or disabled that is owned by the authority. The authority may sell, transfer, otherwise convey, or close all or part of the facility and may discontinue a service.

(c) The authority may issue revenue bonds and other notes in accordance with this chapter to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(d) For the purposes of this section, a facility or service described by Subsection (a) is considered to be a hospital project under Chapter 223 (Hospital Project Financing Act).

(e) This section applies only to an authority that owns or operates a hospital licensed under Chapter 241 and that is located in:

- (1) a county with a population of 225,000 or less;
- (2) those portions of extended municipalities that the federal census bureau has determined to be rural;
- (3) an area that is not delineated as an urbanized area by the federal census bureau; or
- (4) a municipality with a population of less than 12,000 and a county with a population of 2.5 million or more at the time the authority begins operating a facility or providing a service described by Subsection (a).

(f) This section does not authorize the authority to issue revenue bonds or other notes in accordance with this chapter to construct, acquire, own, enlarge, improve, furnish, or equip a facility or service listed in Subsection (a) if a private provider of the facility or service is available and accessible in the service area of the authority.

(g) An authority described by Subsection (e)(4) may not own or operate more than 50 licensed nursing home beds under this section and is not subject to Subsection (f).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 117, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 4, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 793, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1030, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.035. POWERS AND DUTIES OF CERTAIN HOSPITAL AUTHORITIES; LEASE. (a) This section applies only to an authority created in a county with a population of at least 350,000 in which a hospital district is not located.

(b) A municipality may lease to an authority subject to this section all or part of a hospital and any other health facilities owned by the municipality. The lease may provide that the municipality may retain during the term of the lease specified rights relating to the operation of the authority and the facilities leased from the municipality. The lease may provide that:

- (1) the municipality may retain the power to appoint all directors of the authority, notwithstanding Section 262.012;
- (2) the authority is required to perform specified health care services on behalf of the municipality;
- (3) the municipality may agree to fund specified health

care services;

(4) the authority is prohibited from eliminating or curtailing specified health care services offered at the facilities leased from the municipality without prior consultation with or the approval of the municipality;

(5) the authority is prohibited from subletting the facilities leased from the municipality or assigning its rights under the lease for a total term of more than five years, or entering into a management contract for the operation of the facilities leased from the municipality as a whole, or pledging the authority's revenues derived from the operation of the facilities leased from the municipality, without prior consultation with or the approval of the municipality;

(6) the board may be subject to any ethics or conflict of interest ordinance applicable to other sovereign city boards and commissions adopted by the municipality and any goals for hiring and contracting with minorities or women adopted by and for the municipality;

(7) the authority will comply with Chapter 252, Local Government Code, relating to purchasing and contracts;

(8) the municipality may issue general obligation bonds for the use and benefit of the authority;

(9) an authority and its employees may participate in the municipality's employee retirement plan, employee health plans, and other employee benefit plans; and

(10) the lease may contain other terms and conditions that the municipality and authority agree on and which are not prohibited by law or by the constitution.

(c) If the municipality retains in the lease the right to appoint all members of the board, the municipality may remove the entire board or any member of the board at any time with cause. The municipality may remove the board or a member of the board under this subsection only after reasonable written notice to the board or board members and on the affirmative vote of a majority of the members of the governing body of the municipality.

(d) For purposes of Chapters 101 and 102, Civil Practice and Remedies Code, a municipal hospital authority subject to this section is a unit of local government and not a municipality.

(e) An authority subject to this section is subject to Chapter 551, Government Code, and Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 558, Sec. 1, eff. June 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff.  
Sept. 1, 1995.

Sec. 262.036. RETIREMENT BENEFITS. If any authority is created by the governing body of a municipality which has established a municipal retirement system pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes), then the board of such authority shall have the authority to provide and shall provide retirement benefits for employees of the authority by participating in and making all contributions required or authorized by the municipal retirement system established by the municipality pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes).

Added by Acts 1993, 73rd Leg., ch. 614, Sec. 1, eff. July 1, 1993.  
Renumbered from Health & Safety Code Sec. 262.035 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(23), eff. Sept. 1, 1995.

Sec. 262.037. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that

chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.038. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.039. INVESTMENT OF AUTHORITY FUNDS. (a) This section applies only to an authority that:

- (1) is located in a county of 3.3 million or more;
- (2) has no outstanding bonds issued under Subchapter D; and
- (3) does not own or operate a hospital.

(b) Notwithstanding any other law, an authority may invest authority funds:

- (1) as provided by Chapter 2256, Government Code; and
- (2) in any investment a trustee is authorized to make under Subtitle B, Title 9, Property Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER D. BONDS**

Sec. 262.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

- (1) be signed by the president or vice-president of the board;
- (2) be countersigned by the secretary of the board; and
- (3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

- (1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;
- (2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and
- (3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.252, eff. Sept. 1, 2001.

Sec. 262.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board shall publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be not later than the 15th day

before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the president or secretary of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the authority who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the municipality's governing body, mayor, and municipal secretary.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.253, eff. Sept. 1, 2001.

Sec. 262.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years' interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and



(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of municipal funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this chapter may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.254, eff. Sept. 1, 2001.

Sec. 262.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.050. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company; or
- (6) the interest and sinking fund or other public fund of an authority.

(b) The bonds are eligible and lawful security, to the extent of the value of the bonds, for the deposits of public funds of the state or an authority if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 263. COUNTY HOSPITALS AND OTHER HEALTH FACILITIES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 263.001. TWO OR MORE COUNTIES MAY JOIN. (a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:

- (1) each of the counties has fewer than 15,000 inhabitants; and
- (2) the Texas Board of Health approves.

(b) The counties acting together have the same powers and liabilities under this chapter as a single county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain more than one county hospital if considered advisable by the commissioners court of the county and approved by the Texas Board of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. ESTABLISHING, ENLARGING, SELLING, AND CLOSING COUNTY HOSPITALS**

Sec. 263.021. ESTABLISHING OR ENLARGING HOSPITAL ON PETITION; SUBMISSION OF BOND PROPOSITION. (a) The commissioners court of a county may establish a county hospital or any medical or other health facility or enlarge an existing hospital or facility for the care and treatment of persons who are sick or injured in accordance with this subchapter.

(b) Ten percent or more of the qualified property taxpaying voters of a county may petition the commissioners court of the county to establish or enlarge a county hospital or any medical or other health facility.

(c) A petition may not be presented to the commissioners court during the 12-month period succeeding the date on which a petition under this section was last presented to the court unless the county does not own a hospital.

(d) On proper petition, the commissioners court shall, within the period designated in the petition, submit to the qualified voters of the county at a special or regular election the proposition of issuing bonds in the amount designated in the petition to establish or enlarge the hospital or facility.

(e) The commissioners court may not submit to the voters a bond proposition to establish or enlarge a county hospital or facility more than twice during any 12-month period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.022. POWERS AND DUTIES OF COMMISSIONERS COURT AFTER PASSAGE OF BOND PROPOSITION. (a) If a bond proposition under Section 263.021 is approved by a majority of the qualified voters voting at the election, the commissioners court of the county shall establish or enlarge a hospital or medical or other health facility as provided in the proposition and maintain the hospital or facility.

(b) In establishing, enlarging, or maintaining a hospital or facility, the commissioners court may:

(1) purchase or lease real or personal property or acquire real property and easements to real property by condemnation;

- (2) purchase or construct any necessary buildings;
- (3) make necessary improvements, repairs, and alterations to an existing building;
- (4) impose property taxes in the county for all necessary expenditures related to the hospital or facility, including maintenance expenses;
- (5) issue county bonds to provide funds to establish, enlarge, and equip the hospital or facility or make any necessary permanent improvements in connection with the hospital or facility; and
- (6) accept and hold a grant or devise of land or a gift or bequest of money or personal property in trust for the county and apply the principal or income, or both, for the benefit of the hospital or facility and in accordance with the terms of the gift.

(c) Subject to this chapter, the commissioners court may purchase or lease real or personal property, or both, in an adjacent county if the court considers the purchase or lease necessary for hospital purposes. The commissioners court may not acquire real property in an adjacent county by condemnation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.023. CONSTRUCTION OF HOSPITAL TO AVOID INADEQUATE CARE IN CERTAIN COUNTIES. (a) The commissioners court of a county shall provide for the construction of a county hospital if:

- (1) the county has a municipality with more than 10,000 inhabitants as ascertained by the court in the manner determined by a resolution of the court; and
- (2) the county does not have a county hospital or the county hospital is inadequate.

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the Texas Board of Health may, for good cause, extend this period.

(c) The hospital must have a room or ward for the care of confinement cases and a room or ward for the temporary care of persons suffering from mental or nervous disease.

(d) The hospital must have separate buildings for persons suffering from tuberculosis and other communicable diseases.

(e) Sufficient accommodations shall be added to the hospital as needed to take care of persons in the county who are sick or injured.

(f) If adequate funds for the issuance of county warrants and scrip for the construction of the hospital are not available from the county, the commissioners court shall submit, either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the construction of the hospital. If the proposition is not approved by a majority vote at the election, the court shall, on petition of 10 percent or more of the qualified voters of the county, resubmit the proposition.

(g) A petition may not be presented to the commissioners court if a petition has been presented to the court in the preceding 12 months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.024. HOSPITAL REVENUE BONDS. (a) A county may issue revenue bonds for:

(1) acquiring, constructing, repairing, equipping, or renovating buildings and improvements for county hospital purposes; or

(2) acquiring land for county hospital purposes.

(b) The county may issue bonds to refund previously issued revenue bonds.

(c) The revenue bonds shall be payable from and secured by a pledge of all or a part of the revenues of the county derived from the operation of the hospital. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of the county's hospital property.

(d) The revenue bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.025. HOSPITAL OPERATING FUNDS USED FOR IMPROVEMENTS IN COUNTIES OF 24,500 TO 25,500. The commissioners court of a county with a population of 24,500 to 25,500 may use excess money in the county hospital operating fund for making permanent improvements to

the county hospital and for the payment of county bonds issued for the construction and improvement of a county hospital facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 71, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 35, eff. Sept. 1, 2001.

Sec. 263.026. HEALTH UNIT OR CENTER IN COUNTY WITH POPULATION GREATER THAN 100,000. (a) The commissioners court of a county with a population of more than 100,000 that has a county hospital may acquire sites and construct or otherwise acquire buildings to use for county public health units or public health centers as part of the county hospital system. The commissioners court may locate a health unit or center anywhere in the county.

(b) Payments for the sites or buildings shall be made from the county permanent improvement fund. To pay for a site or building for a health unit or center, the commissioners court may:

(1) issue negotiable bonds and impose taxes to pay the principal of and interest on the bonds in accordance with Subtitles A and C, Title 9, Government Code;

(2) issue time warrants and impose taxes to pay the principal of and interest on the time warrants in accordance with Subchapter C, Chapter 262, Local Government Code; or

(3) by order issue certificates of indebtedness and impose taxes to pay the principal of and interest on the certificates in accordance with this section.

(c) The certificates of indebtedness must:

(1) mature not later than 35 years after the date of the certificates; and

(2) be signed by the county judge and attested by the county clerk, either by their actual or facsimile signatures as provided by the order of issuance.

(d) The interest on certificates of indebtedness may be evidenced by interest coupons at the discretion of the commissioners court. The interest coupons must be executed by the facsimile signatures of the county judge and county clerk.

(e) The certificates of indebtedness and the record relating to their issuance shall be submitted to the attorney general for examination. If the certificates are issued in accordance with the

Texas Constitution and this section, the attorney general shall approve the certificates and the comptroller shall register the certificates. If the certificates are registered, they are incontestable after they are delivered to the purchasers.

(f) The commissioners court shall sell the certificates of indebtedness for not less than their par value plus accrued interest. The commissioners court shall impose a continuing annual ad valorem tax sufficient to pay the principal of and interest on the certificates as each becomes due and payable.

(g) Certificates of indebtedness issued under this section are negotiable instruments.

(h) The commissioners court may issue refunding bonds to refund bonds and certificates issued under this section, subject to state law applicable to refunding bonds issued by counties. The commissioners court may issue the refunding bonds without notice or a referendum.

(i) The commissioners court may issue refunding bonds to refund time warrants issued under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 32, eff. Sept. 1, 1999.

Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR BY BOARD OF HEALTH. If requested by the commissioners court of a county, the Texas Board of Health must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.028. CONTRACT FOR CARE. (a) The commissioners court of a county that does not have a municipality with a population of more than 10,000 may contract with a hospital in the county, an incorporated society or municipality in the county that maintains a hospital, or an adjacent county for the care of residents of the county who are sick or injured.

(b) The term of the contract may not exceed one year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.029. SALE OR LEASE OF HOSPITAL. (a) A county may sell or lease all or part of a county hospital or medical or other health facility operated by the county, including real property, if the commissioners court of the county, by order entered in the minutes of the court, finds that the sale or lease is in the best interest of the county.

(b) The commissioners court shall set a time and place for a hearing on the proposed sale or lease. The date of the hearing may not be earlier than the 16th day or later than the 30th day from the date of the order.

(c) The county clerk, immediately after the time and place of the hearing are set, shall give notice informing all qualified voters of the county and other persons interested in the issue of selling or leasing the hospital of the time and place of the hearing and their right to appear at the hearing and to speak for or against the proposed action. The county clerk shall publish notice once a week for two consecutive weeks in a newspaper published in the county. The first notice must be published not later than the 15th day before the date set for the hearing. If no newspaper is published in the county, the county clerk shall post the notice at the courthouse door for 14 days before the date set for the hearing.

(d) Ten percent or more of the qualified voters in the county may petition the commissioners court in writing before the time set for the hearing for a referendum on whether the hospital shall be sold or leased or shall continue under county operation. The commissioners court may not sell or lease the hospital unless the proposition to sell or lease the hospital is approved by a majority of the votes cast at the election. The election shall be held under and governed by the election provisions of Section 263.021.

(e) If no petition is filed with the county clerk, the commissioners court may conduct the hearing. Any person interested may appear in person or by attorney. The commissioners court may adjourn the hearing from day to day and from time to time as it considers necessary. On completion of the hearing, the commissioners court may enter an order determining whether or not to sell or lease the hospital. If the court finds that due notice was given, no petition was filed, and the proposed sale or lease is in the best interest of the county, the commissioners court may enter in its



minutes an order that the hospital be sold or leased.

(f) The commissioners court may submit the issue of the sale or lease to the voters and withhold its final determination pending the election even if no petition is filed.

(g) The court may sell the hospital or may lease the hospital to be operated as a hospital by the lessee under terms satisfactory to the commissioners court and the lessee. The commissioners court shall enter in its minutes an order of the sale or lease that contains a complete copy of the sales or lease contract.

(h) If 50 qualified property taxpaying voters in a county with a population of 5,000 to 10,390 file a written petition with the commissioners court requesting a referendum on the issue of leasing all or part of the county hospital and if the proposition to lease all or part of the hospital is not approved by a majority of the votes cast at the election, the commissioners court may not lease all or part of the hospital for a period greater than five years.

(i) The commissioners court may deposit all or part of the proceeds from the sale of a county hospital to the credit of a fund to be known as the county health care fund and shall deposit any of the remainder to the credit of the county general fund. The county health care fund may be used only to finance items related to providing health care to county residents, including indigent residents. The commissioners court may deposit to the credit of the county health care fund all or part of the interest from that fund and shall deposit any remainder to the credit of the county general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.030. CLOSING OF HOSPITAL. (a) The commissioners court of a county by order on terms it considers reasonable may close a hospital or medical facility constructed, purchased, or acquired under this chapter.

(b) The order is final 30 days after the date of adoption unless at least 10 percent of the qualified voters in the county petition the commissioners court requesting an election to determine whether the hospital or facility should be closed.

(c) On proper petition, the commissioners court shall set a time for an election and shall submit to the qualified voters of the

county ballots providing for voting for or against the proposition:  
"The closing of (name of hospital or facility to be closed)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.031. CLOSING PART OF HOSPITAL. A county may close a part of a county hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. BOARD OF MANAGERS**

Sec. 263.041. APPOINTMENT OF BOARD OF MANAGERS. (a) The commissioners court of a county shall appoint at least six but not more than 12 residents of the county as the board of managers of a county hospital or medical or other health facility after the court acquires the site for the hospital and awards the contracts for the buildings and improvements necessary for the hospital.

(b) A manager is appointed for a term of two years except that the commissioners court may set the terms of the initial managers at less than two years so that as close as possible to one-half of the managers' terms expire each year.

(c) An appointment to fill a vacancy is for the unexpired term.

(d) A vacancy is created if a manager misses three consecutive board meetings unless the board takes formal action to excuse the absences.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.042. OPERATION OF BOARD OF MANAGERS. (a) The board of managers shall elect from among its members a president, at least one vice-president, a secretary, and a treasurer.

(b) The county judge of the county in which the hospital is located may vote to break a tie vote by the board of managers.

(c) The board of managers shall meet at the hospital at least once a month and may meet at other times as provided by its bylaws.

(d) The board of managers shall hold an annual meeting before the beginning of the third week preceding the date of the meeting of the commissioners court at which the court considers appropriations

for the following year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.043. COMPENSATION AND EXPENSES OF BOARD OF MANAGERS.

(a) The commissioners court may provide hospitalization insurance as compensation for the services of the board of managers.

(b) The commissioners court shall pay and audit, in the same manner as other expenses of the hospital, the managers' actual and necessary traveling and other expenses within this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.044. TORT CLAIMS PAYMENTS. A member of the board of managers is a county officer for purposes of Chapter 102, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.045. REMOVAL OF MANAGER. After citation, the commissioners court may, at any time, remove a member of the board of managers from office for cause.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.046. GENERAL POWERS AND DUTIES OF BOARD OF MANAGERS.

(a) The board of managers shall generally manage and control the hospital, including:

- (1) its buildings and grounds;
- (2) its officers and employees;
- (3) its patients; and
- (4) all matters relating to its government, discipline, contracts, and fiscal concerns.

(b) The board of managers may adopt rules it considers necessary to carry out the purposes of the hospital.

(c) The board of managers shall maintain an effective inspection of the hospital and keep itself informed of the hospital's

affairs and management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.047. SALARIES. (a) The board of managers shall determine the salaries of the officers and employees of the hospital, including the superintendent.

(b) The salaries may not exceed the appropriation made for the salaries by the commissioners court.

(c) The salaries are full compensation for all services rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.048. VISITING PHYSICIANS. (a) The board of managers shall appoint a staff of visiting physicians who visit and treat hospital patients at the request of the board or the superintendent.

(b) The physicians serve without pay from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.049. DISCHARGE OF PATIENTS. (a) The board of managers shall make the final disposition of a case concerning the discharge of a patient from the hospital.

(b) The decision of the board of managers regarding discharge of a patient may not be appealed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.050. DISPENSARIES AND CLINICS. (a) The board of managers may establish and operate:

(1) an outpatient department or a free dispensary and clinic at the hospital or in the municipality located nearest the hospital; and

(2) a branch dispensary or clinic in a municipality that is located in the county and that has 5,000 or more inhabitants.

(b) The board of managers shall appoint a physician to serve at

the dispensary or clinic, determine the time that the physician is required to spend at the dispensary or clinic, and fix the salary, if any, of the physician.

(c) The board of managers shall appoint a trained visiting nurse to serve in connection with the dispensary or clinic and the hospital. The board shall fix the salary of the nurse within the limits of the appropriation made for the salary by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.051. SCHOOL FOR CHILDREN HAVING TUBERCULOSIS. (a) The board of managers may establish a special and separate school for the education, care, and treatment of children having tuberculosis.

(b) The school may be located at the hospital, in the municipality nearest the hospital, or in the largest municipality in the county.

(c) The school shall be conducted as a branch of the hospital and the children at the school are patients of the hospital and subject to this chapter.

(d) The board of managers shall employ a specially qualified teacher to instruct and care for the children of the school.

(e) The board of managers shall assign the superintendent of the hospital, a member of the staff of visiting physicians, or a physician serving a county dispensary or shall employ a physician to attend the children of the school and to supervise their care and treatment.

(f) The board of managers shall assign a nurse from the hospital or a visiting nurse or shall employ a nurse to assist in the care and treatment of the children of the school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.052. CONTRACT FOR CARE BY BOARD. The board of managers may contract for the care of a person who is sick or injured and who applies to the hospital for admission. The board may contract for this care with:

- (1) a hospital in the county; or
- (2) an incorporated society or municipality in the county

that maintains a hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.053. RECORDS. (a) The board of managers shall keep a proper record of its proceedings in a book provided for that purpose. The record must be open for inspection at all times to the board, the commissioners court, and any resident of the county.

(b) The board of managers shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, which shall provide for their payment in the same manner that other charges against the county are paid.

(c) The board of managers shall report to the commissioners court annually, and at other times as directed by the court, on the details of the operation during the year of the hospital dispensaries and school for children suffering from tuberculosis. The report must contain:

(1) the number of patients admitted and the methods and result of their treatment, together with suitable recommendations and other material required by the court; and

(2) full and detailed estimates of the appropriations required during the following year for all purposes, including maintenance, building construction, repairs, renewals, extensions, and improvements.

(d) The board of managers shall incorporate into its report to the commissioners court the accounts and records prepared by the superintendent of the hospital under Section 263.077.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. SUPERINTENDENT**

Sec. 263.071. APPOINTMENT OF SUPERINTENDENT. (a) The board of managers shall appoint a superintendent of the hospital who holds office at the pleasure of the board.

(b) The superintendent may not be a member of the board of managers and must be a qualified practitioner of medicine or be specially trained for the work of a superintendent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.072. ROLE OF SUPERINTENDENT. (a) The superintendent is the chief executive officer of the hospital.

(b) The superintendent is subject to the bylaws and rules of the hospital and to the board of managers.

(c) The board of managers shall determine the amount of time that a superintendent must spend at the hospital in the performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.073. BOND. The superintendent, before beginning to discharge the duties of office, shall give a bond in a sum determined by the board of managers to secure the faithful performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.074. GENERAL POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent has general supervision and control of:

- (1) the records and accounts of the hospital;
- (2) the hospital buildings; and
- (3) the internal affairs of the hospital, including discipline.

(b) The superintendent shall enforce the bylaws and rules adopted by the board of managers for the government, discipline, and management of the hospital and its employees and patients.

(c) The superintendent may adopt additional rules and orders the superintendent considers necessary that are not inconsistent with law or the rules and directions of the board of managers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.075. EQUIPPING THE HOSPITAL. (a) The superintendent shall, with the consent of the board of managers, equip the hospital with furniture, appliances, fixtures, and other facilities necessary for the care and treatment of patients and the use of officers and

employees.

(b) The superintendent shall purchase all supplies necessary for the hospital.

(c) Expenditures under this section may not exceed the amount provided for them by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.076. OFFICERS AND EMPLOYEES. (a) With the consent of the board of managers, the superintendent shall appoint resident officers and employees considered proper and necessary by the superintendent for the efficient performance of the hospital's business.

(b) The superintendent shall determine the duties of the officers and employees of the hospital.

(c) The superintendent may discharge an officer or employee at the discretion of the superintendent for cause stated in writing after an opportunity for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.077. ACCOUNTS AND RECORDS. (a) The superintendent shall require daily accounts and records of the hospital's business and operations.

(b) The superintendent shall require that:

(1) a record is kept of the condition of a patient on and after admission; and

(2) proper records and accounts are kept of the admission of a patient, including the patient's name, age, sex, color, marital condition, residence, occupation, and place of past employment.

(c) The superintendent shall present the accounts and records to the board of managers in an annual report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.078. FORMS FOR ADMISSION. (a) The county hospital shall provide forms for application for admission to the hospital and the superintendent shall forward the forms free to a licensed



physician in the county in which the hospital is located at the request of the physician.

(b) An application for admission to a county hospital must be made, if practicable, on a form provided under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.079. ADMISSION OF PERSONS FROM COUNTY. (a) A resident of a county in which a county hospital is located who desires treatment in the hospital may apply in person to the superintendent or to a licensed physician for examination. If the physician finds that the resident is sick or injured, the physician may apply to the superintendent for admission of the resident.

(b) After the superintendent receives an application for admission to the hospital, the superintendent shall notify the applicant to appear in person at the hospital if:

(1) it appears from the application that the applicant is sick or injured; and

(2) there is a vacancy in the hospital.

(c) The superintendent, acting under the general direction of the board of managers, shall admit an applicant for admission to the hospital in order of application or according to the urgency of need of treatment if:

(1) after a personal examination of the applicant, the superintendent is satisfied that the applicant is sick or injured; and

(2) the applicant resides in the county at the time of the application for admission to the hospital.

(d) An application for admission must state whether, in the judgment of the physician, the applicant is able to pay, in whole or in part, for the applicant's care and treatment while in the hospital.

(e) An application must be filed and recorded in a book kept for that purpose in the order it is received.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.080. ADMISSION OF PERSONS FROM ADJACENT COUNTY. The superintendent shall admit to the hospital a person sent by the

commissioners court of an adjacent county if:

(1) the adjacent county has contracted with the board of managers for the care and treatment of persons who are sick or injured;

(2) the person resides in the adjacent county at the time of the application for admission to the hospital; and

(3) there is sufficient provision for the care of persons who are sick or injured and who reside in the county in which the hospital is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.081. CONDITION AND TREATMENT OF PATIENT. The superintendent shall require that a patient's physical condition is carefully examined and the treatment the patient needs is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.082. PAYMENT BY PATIENT. (a) A patient may not be permitted to pay an amount for the patient's maintenance in the hospital greater than the average per capita cost of maintenance in the hospital, including a reasonable allowance for the interest on the cost of the hospital.

(b) An officer or employee of a county hospital may not accept from a patient a fee, payment, or gratuity for any service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.083. SUPPORT. (a) The superintendent shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to the hospital from the county in which the hospital is located. If the superintendent finds that the patient or the patient's relatives are liable to pay for the patient's care and treatment in whole or in part, the superintendent shall issue an order directing the patient or the patient's relatives to pay to the treasurer of the hospital a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to

pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) A superintendent may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a decedent.

(d) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over that ability or if there is doubt in the mind of the superintendent of the hospital over that ability. The court shall hear witnesses and issue any order that may be proper. The order may not be appealed.

(e) Discrimination in the accommodations, care, or treatment of a patient may not be made because the patient or the patient's relatives contribute to the cost, in whole or in part, of the patient's maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.084. DISCHARGE OF PATIENTS. (a) The superintendent shall temporarily or permanently discharge a patient from the hospital if the patient:

- (1) is not sick or injured or recovers from the sickness or injury;
- (2) wilfully or habitually violates hospital rules; or
- (3) is not suitable for treatment for any other reason.

(b) The superintendent shall make a full report of a discharge of a patient from the hospital at the next meeting of the board of managers after the discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.085. COLLECTION OF MONEY. (a) The superintendent shall collect money due the hospital.

(b) The superintendent shall keep an accurate account of money collected at the hospital, report at the monthly meeting of the board of managers the amount of money collected, and transmit the money to

the county treasurer of the county in which the hospital is located within 10 days after the date of the meeting of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER E. ENFORCEMENT AND DISSEMINATION OF INFORMATION**

Sec. 263.101. INSPECTIONS. (a) A resident officer of a county hospital shall admit a member of the board of managers into every part of the hospital and its premises.

(b) On the demand of a member of the board of managers, a resident officer of the hospital shall:

(1) give the board access to all books, papers, accounts, and other records pertaining to the hospital; and

(2) furnish the board with copies, abstracts, and reports.

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

(1) the Texas Board of Health;

(2) the commissioners court; or

(3) a state board of charities, if such a board is created.

(d) A resident officer of a county hospital shall admit a representative listed in Subsection (c) into every part of the hospital and its buildings.

(e) On the demand of a representative listed in Subsection (c), a resident officer of the hospital shall give the representative access to all books, papers, accounts, reports, and other records pertaining to the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.102. TEXAS BOARD OF HEALTH RULES AND PUBLICATIONS.

(a) The board of managers shall print, or purchase from the Texas Board of Health at the actual cost of printing:

(1) rules adopted by the Texas Board of Health for the care of persons having a communicable disease and for the prevention and spread of communicable disease; and

(2) bulletins and other publications prepared by the Texas Department of Health providing information about the cause, nature, treatment, and prevention of disease.

(b) The board of managers shall send or deliver copies of those

rules, bulletins, and publications to:

- (1) all practicing physicians in the county in which the hospital is located;
- (2) all public schools;
- (3) private schools that request copies; and
- (4) organizations, churches, societies, unions, and individuals who present a written request for copies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 264. COUNTY HOSPITAL AUTHORITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 264.001. SHORT TITLE. This chapter may be cited as the County Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.002. DEFINITIONS. In this chapter:

- (1) "Authority" means a county hospital authority created under this chapter.
- (2) "Board" means the board of directors of an authority.
- (3) "Bond" includes a note.
- (4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.
- (5) "Hospital" means a hospital project as defined under Section 223.002.
- (6) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of or creating a mortgage lien on properties to secure revenue bonds issued by an authority.
- (7) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.003. CREATION. (a) The commissioners court of a county by order may create a county hospital authority and designate the name of the authority if the commissioners court finds that creation of the authority is in the best interest of the county and its residents.

(b) The authority is composed only of the territory in the county.

(c) The authority is a body politic and corporate and a political subdivision of the state.

(d) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. BOARD OF DIRECTORS**

Sec. 264.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the order creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The commissioners court shall appoint the directors of the authority for terms not to exceed three years except as otherwise provided by this section.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The commissioners court shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) An officer or employee of the county is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.013. OFFICERS. (a) The board shall elect:

- (1) a president and a vice-president, who must be directors;
- (2) a secretary and a treasurer, who are not required to be directors; and
- (3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 264.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

- (1) have a seal;
- (2) sue and be sued; and
- (3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS.

(a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals located in the county.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital or part of a hospital owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the power to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.024. MANAGEMENT AGREEMENT. (a) The board may enter into an agreement with any person for the management or operation of a hospital or part of a hospital owned by the authority under terms



that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the power to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the power to:

(1) issue bonds;

(2) make or amend a lease of a hospital or a management agreement relating to a hospital; or

(3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources, the board shall produce revenue sufficient to:

(1) pay the expenses of owning, operating, and maintaining the hospital;

(2) pay the interest on the bonds as it becomes due;

(3) create a sinking fund to pay the bonds as they become due; and

(4) create and maintain a bond reserve fund and other funds

as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient, with the nonprofit corporation's or lessee's other sources of revenue, to:

(1) pay the expenses of operating and maintaining the hospital; and

(2) make payments or pay rentals to the authority that are sufficient, with the authority's other pledged sources of estimated revenue, to:

(A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a county may select a depository under Chapter 116, Local Government Code; or

(2) award its depository contract to the depository or depositories of the county on the same terms as the terms of the county depository agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.030. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

- (1) a trust indenture or bond resolution relating to outstanding bonds of the authority; or
- (2) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board must provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board must publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in the county. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

(e) This section does not apply to the sale or closing of a hospital as provided in Section 264.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1011, Sec. 2, eff. Sept. 1, 1997.

Sec. 264.031. SALE OR CLOSING OF HOSPITAL. (a) The board may sell all or part of a hospital owned by the authority or close all or part of a hospital owned or operated by the authority. The sale or closing must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president

and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) The sale or closing of a hospital may not take effect before the expiration of the time in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the county. The number of qualified voters is determined by the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.032. EMERGENCY BORROWING. (a) If the board declares that funds are not available to meet lawfully authorized obligations of the authority and that an emergency exists, the board may borrow money at a rate of interest not to exceed the maximum annual percentage rate allowed by law for authority obligations at the time the loan is made.

(b) To secure a loan, the board may pledge:

(1) revenues of the authority that are not pledged to pay bonded indebtedness of the authority;

(2) authority bonds that have been authorized but not sold;  
or

(3) revenues of the authority if the pledge is subordinate to any pledge securing outstanding bonds of the authority.

(c) A loan for which bonds are pledged must mature not later than the first anniversary of the date on which the loan is made. A loan for which authority revenues are pledged must mature not later than the fifth anniversary of the date on which the loan is made.

(d) The board may not spend money obtained from a loan under this section for any purpose other than the purpose for which the board declared an emergency and, if bonds are pledged to pay the loan, for any purpose other than the purposes for which the pledged

bonds were authorized.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.033. TIME WARRANTS. The authority may issue time warrants in the manner in which a commissioners court may issue time warrants under Subchapter C, Chapter 262, Local Government Code.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 33, eff. Sept. 1, 1999.

Sec. 264.034. FACILITIES AND SERVICES FOR THE DISABLED OR THE ELDERLY. (a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, equip, or provide the following facilities and services to care for the disabled or the elderly:

- (1) a nursing home or similar long-term care facility;
- (2) elderly housing;
- (3) assisted living services;
- (4) home health care;
- (5) personal care;
- (6) special care;
- (7) continuing care; or
- (8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement to care for the disabled or the elderly under Subsection (a).

(c) The authority may sell, transfer, otherwise convey, or close all or part of a facility described by Subsection (a) and discontinue a service described by Subsection (a).

(d) The authority may issue revenue bonds, notes, and time warrants as provided by this chapter to acquire, construct, or improve a facility described by Subsection (a).

(e) For purposes of Chapter 223, a facility or service described by Subsection (a) is a hospital project.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.035. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

Sec. 264.036. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

#### **SUBCHAPTER D. BONDS**

Sec. 264.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property

owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

- (1) be signed by the president or vice-president of the board;
- (2) be countersigned by the secretary of the board; and
- (3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

- (1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;
- (2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and
- (3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.255, eff. Sept. 1, 2001.

Sec. 264.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board must publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be published not later than the 15th day before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the secretary or president of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the commissioners court, county judge, and county clerk.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.256, eff. Sept. 1, 2001.

Sec. 264.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years'



interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of county funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this section may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.257, eff. Sept. 1, 2001.

Sec. 264.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general the bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following

provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.050. LEGAL INVESTMENTS. Bonds of the authority are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company; or
- (6) the sinking fund of a political corporation or subdivision of the state, including a municipality, county, or school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 265. JOINT MUNICIPAL AND COUNTY HOSPITALS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 265.001. MUNICIPALITY WITH POPULATION OF AT LEAST 10,000 AND ANY COUNTY. (a) The commissioners court of a county may cooperate with the proper authorities of a municipality with at least 10,000 inhabitants to establish, build, equip, and maintain a hospital in the municipality.

(b) The commissioners court may appropriate funds for the hospital that the commissioners court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.002. COUNTY AND ANY TWO OR MORE MUNICIPALITIES. (a) The commissioners court of a county may cooperate with the proper authorities of two or more municipalities to establish, build, equip, and maintain a hospital in the county.

(b) The commissioners court may appropriate funds for the

hospital that the court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.003. COUNTY WITH POPULATION OF AT LEAST 92,600 AND MUNICIPALITY WITH POPULATION OF AT LEAST 57,250. (a) The commissioners court of a county with a population of at least 92,600 and the governing body of a municipality in that county with a population of at least 57,250 may establish, build, equip, maintain, and operate a hospital for the care and treatment of sick, infirm, or injured inhabitants of the county or municipality.

(b) The commissioners court and the governing body by agreement may divide the hospital costs between the county and the municipality.

(c) If the amounts in the county or municipal general funds are insufficient to pay the hospital costs, the commissioners court or the governing body at a special or general election may submit to the qualified voters of the county or municipality, respectively, a proposition for the county and municipality to establish, build, equip, maintain, and operate a hospital and for:

(1) the levy of a tax for that purpose not to exceed 10 cents on each \$100 of the taxable value of real and personal property that is taxable by the county or municipality; or

(2) the issuance of bonds by the county or municipality in an amount not to exceed the amount specified in the proposition for all or part of the cost of establishing, building, or equipping the hospital and for the levy of a tax to create a sinking fund for the payment of interest on the bonds not to exceed 10 cents on each \$100 of the taxable value of real and personal property that is taxable by the county or municipality.

(d) The commissioners court or governing body may assess and levy a tax, or may issue bonds in the manner provided for issuance of other bonds by the county or municipality and assess and levy a tax, as stated in the proposition if the proposition is approved by a majority of votes cast in the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. JOINT HOSPITAL WITH BOARD OF MANAGERS**

Sec. 265.011. ESTABLISHMENT OF HOSPITAL BY COMMISSIONERS COURT AND MUNICIPAL GOVERNING BODY. The commissioners court of a county and the governing body of a municipality in that county may jointly appoint a board of managers to establish, build, equip, maintain, and operate one or more hospitals for the care and treatment of the sick, infirm, or injured.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.012. FINANCING. (a) If the municipality or county has issued and sold bonds to establish, build, equip, maintain, and operate a joint municipal and county hospital, the municipality or county may finance the hospital out of general revenue and may levy and collect a tax to finance the hospital not to exceed 10 cents on each \$100 of the taxable value of property taxable by the municipality or county.

(b) The commissioners court and the municipal governing body may contribute to the funds necessary for the hospital in a proportion to which they agree.

(c) The board of managers may spend, in a manner determined by the board, funds provided by the county or municipality through the issuance of bonds or other obligations or by appropriation from other funds, for purposes related to the hospital as if the action were taken by the commissioners court or the governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.013. BOARD OF MANAGERS. (a) The board of managers is composed of seven members.

(b) The commissioners court and the municipal governing body shall each appoint three members to the board, and the commissioners court and the governing body shall jointly appoint one member to the board. Members are appointed for six-year terms. However, in making the initial appointments to the board, each appointing entity shall designate one of its appointees for a term expiring two years after the date of appointment, one for a term expiring four years after the

date of appointment, and one for a term expiring six years after the date of appointment. The term of the initial joint appointee expires six years after the date of appointment.

(c) The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.014. CHAIRMAN. The board of managers shall select a chairman from among its members who shall:

- (1) preside over the board's meetings; and
- (2) sign any contract, agreement, or other instrument made by the board on behalf of the county and municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.015. CONTRACTS. The board of managers may execute any contract relating to establishing, building, equipping, maintaining, or operating the hospital as if the action were taken by the commissioners court or the municipal governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.016. FINANCIAL STATEMENT; BUDGET. (a) The board of managers shall annually prepare and present to the commissioners court and the municipal governing body a statement of the hospital's financial status with a proposed budget for the following year.

(b) On the basis of the financial statement and budget, the commissioners court and the governing body shall appropriate an amount those entities consider proper and necessary for the use of the board of managers in the operation of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.017. ISSUANCE OF REVENUE BONDS. (a) The board of

managers may issue and sell revenue bonds in the name of the hospital to finance:

(1) the acquisition of real property, the acquisition, construction, improvement, repair, or rehabilitation of hospital facilities, or the acquisition of equipment or supplies necessary for the hospital to provide hospital services; or

(2) the installation of equipment necessary for the hospital to provide hospital services.

(b) The board of managers has the powers of an issuer under Chapter 1371, Government Code, and may enter into a credit agreement under that chapter. A bond issued under this subchapter is an obligation under Chapter 1371, Government Code, but is not required to be rated as required by that chapter. In this subsection, "credit agreement" and "obligation" have the meanings assigned by Section 1371.001, Government Code.

(c) Bonds issued under this subchapter must be approved by:

(1) a resolution adopted by the board of managers; and

(2) a resolution or order adopted by the commissioners court of the county and the governing body of the municipality that appointed the board.

(d) At the time of issuance of the bonds, the board of managers may:

(1) determine the title of the bonds, provided the title includes the following: "Board of Managers Joint (insert county name)-(insert municipality name) Hospital Revenue Bonds";

(2) prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing issuance of the revenue bonds; and

(3) provide for the issuance of additional parity bonds or subordinate lien bonds under terms prescribed by the board of managers in the proceedings authorizing issuance of the revenue bonds.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0171. REPAYMENT OF BONDS. The board of managers may provide for the payment of principal of, premium on, if any, and interest on the bonds by pledging all or any part of the hospital's revenue derived from the operation of the hospital or from other

sources.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0172. ADDITIONAL SECURITY FOR BONDS. The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the hospital and rights appurtenant to those properties.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0173. MATURITY. A bond issued under this subchapter must mature not later than 40 years after its date.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0174. BONDS NOT PAYABLE FROM TAXES. A bond issued under this subchapter must contain the following provision: "The holder of this obligation is not entitled to demand payment of this obligation out of any money raised by taxation by (name of county) or by (name of municipality) or from any other income of the county or municipality. The board of managers of the hospital has no taxing power."

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0175. SALE OF BONDS. The board of managers may sell bonds issued under this subchapter at public or private sale in the manner and on the terms approved by the board.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0176. REFUNDING BONDS. (a) The board of managers may refund bonds issued under this subchapter by issuing refunding bonds under terms approved by the board.

(b) All appropriate provisions of this subchapter apply to the

refunding bonds. The refunding bonds shall be issued in the manner provided by this subchapter for issuing other bonds.

(c) The refunding bonds may be sold and delivered in amounts sufficient to pay the principal of and interest and any redemption premium on the bonds to be refunded, at maturity or on any redemption date.

(d) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller shall register the refunding bonds and deliver them to the holder of the bonds being refunded as approved by the board. The exchange may be made in one delivery or in installment deliveries.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0177. AUTHORITY TO BORROW MONEY. (a) After approval by resolution of the commissioners court of the county and the governing body of the municipality that appointed the board, the board of managers may, on behalf of the hospital, borrow money from a federally insured lending institution for a purpose described by Section 265.0179. The board may execute a loan agreement or promissory note as evidence of the obligation to repay the loan.

(b) The board of managers may borrow money in an amount it considers advisable, subject to a rate of interest, security, and other terms it considers advisable. The loan shall mature not later than the 30th anniversary of the date on which the loan is made.

(c) Before entering into a loan under this section, the board of managers must determine that there will be sufficient money available from revenues generated by the hospital to pay the loan when the loan becomes due.

(d) The commissioners court of the county and the governing body of the municipality that appointed the board of managers must approve the terms of a loan agreement by written resolution.

(e) Chapter 1202, Government Code, does not apply to a promissory note or any other instrument evidencing a loan under this section.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0178. PLEDGE OF SECURITY. (a) A loan under Section



265.0177 may be:

(1) payable from and secured by a pledge of all or part of the revenues, income, or resources of the hospital that are not pledged to pay a bonded indebtedness of the hospital; or

(2) secured by a deed of trust or other security interest in any property of the hospital that is not pledged to pay a bonded indebtedness of the hospital.

(b) The holder of a loan obligation under Section 265.0177 is not entitled to demand payment of the principal and interest on the loan from any money or property of the hospital other than the money or property specifically pledged to secure payment of the loan.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0179. PERMISSIBLE USES OF LOAN PROCEEDS. The proceeds from a loan under Section 265.0177 may be used to pay costs related to the acquisition, construction, rehabilitation, and equipping of a hospital facility, including costs related to the acquisition of real property and any other improvement considered necessary and appropriate by the board of managers.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.018. HOSPITAL PROPERTY. The board of managers may acquire, hold, or dispose of property or an interest in property. As agreed by the county and municipality, the county or municipality may hold title to hospital property, or title may be held in the name of the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0181. TRANSFER OF PROPERTY. On dissolution of the board of managers, title to property held by the board or in the name of the hospital shall be transferred to the county and municipality as agreed to by the county and municipality.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.019. USE OF EARNINGS OR ASSETS FOR PRIVATE PURPOSES PROHIBITED. Except as reasonable compensation for services rendered or reasonable allowance for authorized expenditures incurred on behalf of the board of managers or the hospital, the net earnings of the board or the hospital may not be used for the benefit of a private officer, board member, individual, or substantial contributor to the board of managers or the hospital. The assets of the board or the hospital may not be distributed to, be divided among, be used for, accrue to, or benefit a private officer, board member, individual, or substantial contributor to the board or the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.020. APPLICABILITY. Sections 265.017-265.019 apply only to a hospital located in a county with a population of 75,000 or more.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

#### **SUBCHAPTER C. JOINT HOSPITAL CONTROLLED BY MUNICIPALITY OR COUNTY**

Sec. 265.021. OWNERSHIP AND CONTROL DESIGNATED. (a) A county with a population of at least 200,000 and one or more municipalities in the county that jointly own and operate a hospital in the county may by agreement designate one of those governmental entities to assume the entire ownership and control of the hospital on terms to which those governmental entities agree.

(b) On the agreement of the commissioners court and the governing body of each municipality that jointly owns and operates the hospital, a countywide election on the issue of the future ownership and operation of the hospital may be ordered. The majority vote on the propositions submitted shall govern the future ownership and operation of the hospital. The commissioners court shall pay the costs of the election from county funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.022. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY COUNTY. (a) If the county is designated to own and control the

hospital, the commissioners court shall appoint a board of managers with at least three and not more than nine members.

(b) The board of managers has control of the management of the hospital.

(c) The board of managers shall give a report of their management, including all acts and rules of the board, to the commissioners court once each quarter or more often at the request of the commissioners court.

(d) The board of managers shall give a quarterly financial statement to the commissioners court that shows all money spent and received by the board and the purposes of the expenditures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.023. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY MUNICIPALITY. If the municipality is designated to own and control the hospital, the governing body of the municipality may appoint the board of managers under its charter or as it considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.024. TERMS. Members of the board of managers shall be appointed for staggered six-year terms, with one-third of the terms expiring every two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.025. TAX. (a) The commissioners court may authorize and levy a tax not to exceed 50 cents on each \$100 of the taxable value of property taxable by the county for construction of buildings or building additions, for other improvements or equipment, or for operation and maintenance of the hospital if the tax is approved by a majority vote at a county election. Additional taxes may be authorized at subsequent elections if the total tax does not exceed the limit imposed by this subsection.

(b) The voters may approve a part of the tax to be used for the interest and sinking fund for outstanding bonds of the municipality or county issued for construction or maintenance of the hospital,

whether issued before or after the ownership and control of the hospital are designated under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.026. TUBERCULOSIS CONTROL. (a) The commissioners court and each municipal governing body that designates the ownership and control of a joint hospital under this subchapter may conduct a joint program of tuberculosis control in their jurisdictions to protect the public health through alleviation, suppression, and prevention of the spread of tuberculosis.

(b) The program may include cooperation with public or private agencies that have the same objective, whether federal, state, or local.

(c) The commissioners court may levy a tax not to exceed 10 cents on each \$100 of the taxable value of property taxable by the county, in addition to the tax under Section 265.025, if approved by a majority vote at a county election. The revenue from that tax shall be kept separate from other funds and shall be used only for the purposes of this section.

(d) The governing body of a municipality participating in the program may levy a tax not to exceed five cents on each \$100 of the taxable value of property taxable by the municipality if approved by a majority vote at a municipal election in accordance with the municipal charter in a home-rule municipality or with other law in a general-law municipality. The revenue from the tax shall be kept separate from other funds and shall be used only for the purposes of this section. The municipal charter of a home-rule municipality may be amended to create the fund for the tax proceeds or other income.

(e) The county and each municipality participating in the program and levying the taxes may create a joint tuberculosis control board to administer this section. The board must have at least five members. The district judges of the county by majority action, the county health board, the municipal health board of the participating municipality with the largest population, the county judge, and the mayor of each participating municipality shall each appoint a member to the board. Board members serve without compensation.

(f) The members are appointed for three-year terms. However, the term of the first appointment by the county health board or by a

mayor expires one year after the date of appointment, the term of the first appointment by the municipal health board or the county judge expires two years after the date of appointment, and the term of the first appointment by the district judges expires three years after the date of appointment. The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

(g) The board may administer this section to alleviate, suppress, and prevent the spread of tuberculosis in the county as a public health function.

(h) The county and each municipality participating under this section may combine the proceeds from taxes levied under this section to be spent under the board's direction only to:

(1) provide necessary economic aid to indigent persons with tuberculosis and dependent members of their immediate family, on certification by the county or municipal health authority that those persons are indigent and have resided in the county for at least six months before receiving aid or assistance from a public or private charity or service for the person's support or the support of the person's family, in order to treat and prevent the disease and protect the public health; or

(2) pay administrative expenses, including the expenses of case investigation and necessary equipment and services.

(i) The board quarterly shall report the condition of the fund, the expenditures from the fund, and the services performed to the commissioners court and the governing body of each municipality participating under this section. The commissioners court or the governing body of a municipality participating under this section may examine and audit the books and other records of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. JOINT COUNTY-MUNICIPAL HOSPITAL BOARDS**

Sec. 265.031. CREATION OF BOARD. (a) The commissioners court of a county and the governing body of a municipality located in whole or in part in that county may adopt resolutions creating a joint county-municipal hospital board, without taxing power, designated the "\_\_\_\_\_ County-Municipality of \_\_\_\_\_, Texas, Hospital

Board."

(b) A board created under this section is a public agency and body politic.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.032. APPOINTMENT OF BOARD. (a) The board consists of seven directors. A director may serve successive terms.

(b) The commissioners court shall appoint four directors in its resolution creating the board, and the municipal governing body shall appoint three directors in its resolution creating the board.

(c) Directors are appointed for staggered terms of two years. However, in making the initial appointments to the board the commissioners court shall designate two of its appointees to serve two-year terms and two to serve one-year terms, and the governing body shall designate two of its appointees to serve two-year terms and one to serve a one-year term.

(d) The entity that makes an original appointment shall appoint a successor director on the expiration of a director's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.033. OFFICERS. (a) The board shall elect a director as chairman. The chairman shall preside at board meetings and perform other duties and functions prescribed by the board. The chairman may vote in the same manner as any other director.

(b) The board shall elect a secretary, who is not required to be a director. The secretary is the official custodian of the minutes, books, records, and seal of the board and shall perform other duties and functions prescribed by the board.

(c) The board may elect any other officer that the board considers necessary or advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.034. AUTHORITY OF BOARD. (a) The board shall act

through resolutions adopted by the board. The affirmative vote of four directors is required to adopt a resolution.

(b) The board is a joint agent of the county and the municipality for hospital purposes and shall act solely for the joint benefit of the county and the municipality. However, the board shall act independently in the exercise of powers, duties, and functions under this subchapter.

(c) The board may appoint or employ any agent, employee, or official that the board considers necessary or advisable to carry out any power, duty, or function of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.035. SUITS. The board may sue and be sued in its own name, capacity, and behalf.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.036. COMPENSATION. A director may not receive compensation but is entitled to reimbursement for actual expenses incurred in the performance of the duties of director to the extent authorized by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.037. HOSPITAL FACILITIES; OTHER PROPERTY. (a) The board may purchase, construct, receive, lease, or otherwise acquire hospital facilities and may improve, enlarge, furnish, equip, operate, and maintain those facilities.

(b) The county or the municipality may lease or convey title to, or any other interest in, all or part of the county's or municipality's hospital facilities, including real and personal property, to the board on terms agreed to by the county or municipality and the board.

(c) The board may own, receive, encumber, sell, lease, or convey any interest in real or personal property, including gifts and grants. However, the board may not encumber, sell, lease, or convey real or personal property unless the commissioners court and the

governing body of the municipality by resolution approve the transaction.

(d) A board existing in a county with a population of more than 100,000 and a municipality with a population of more than 75,000, as an exercise of its powers as a public agency and body politic, may purchase, construct, receive, lease, or otherwise acquire hospital facilities, including the sublease of one or more hospital facilities, regardless of whether the action might be considered anticompetitive under the antitrust laws of the United States or this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 909, Sec. 1, eff. Sept. 1, 1997.

Sec. 265.038. CONTRACTS FOR HOSPITAL SERVICES. The county or the municipality may contract with the board for the care and treatment of indigent or needy patients or for any other hospital services. The county or the municipality may make payments to the board under the contract and may levy ad valorem taxes or pledge funds or resources for the payments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.039. FUNDS. (a) The board may apply for, receive, and spend federal or state funds available for hospital purposes.

(b) The county or the municipality by resolution may authorize the board to apply for, receive, and spend federal or state funds available for county or municipal hospital purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.040. AUTHORITY TO ISSUE REVENUE BONDS. (a) The board may issue revenue bonds to perform any power, duty, or function under this subchapter. The issuance must be approved by resolution by the commissioners court and the municipal governing body.

(b) The board may prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing the issuance of the bonds.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.041. TERMS OF BONDS. (a) The revenue bonds may mature serially or otherwise not more than 40 years after they are issued. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 1204, Government Code, and may be made redeemable prior to maturity.

(b) The bonds and any appurtenant interest coupons are negotiable instruments.

(c) The bonds may be made registrable as to principal or as to principal and interest.

(d) The directors may determine, in the proceedings authorizing the issuance of the bonds:

- (1) the form, denominations, and manner in which the bonds are issued;
  - (2) the terms and details under which the bonds are issued;
- and
- (3) the manner in which the bonds are executed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.258, eff. Sept. 1, 2001.

Sec. 265.042. PLEDGE OF SECURITY. (a) The revenue bonds may be payable from, and secured by a pledge of, all or part of the revenues, income, or resources of the board or the board's hospital facilities. Additionally, the bonds may be secured by a mortgage or deed of trust on real or personal property, and the board may authorize the execution and delivery of trust indentures or other encumbrances to evidence the security.

(b) The bonds must contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by the hospital board."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.043. SALE AND USE OF PROCEEDS. (a) The revenue bonds may be sold at public or private sale at a price and under terms determined by the directors. The bonds may bear interest at a rate

not to exceed the maximum rate provided by Chapter 1204, Government Code.

(b) Proceeds from the sale of the bonds may be used, if the use is authorized in the proceedings authorizing issuance of the bonds, to:

(1) pay interest on the bonds during the construction of hospital facilities acquired through issuance of the bonds;

(2) pay operation and maintenance expense of the hospital facilities to the extent and for the time specified in the proceedings;

(3) create reserves for the payment of principal of and interest on the bonds; or

(4) invest, until needed, to the extent and in the manner provided in the bond resolution or a trust indenture executed in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.259, eff. Sept. 1, 2001.

Sec. 265.044. PARITY AND SUBORDINATE LIEN BONDS. The directors may provide in the authorization of the revenue bonds for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms set by the board in the proceedings authorizing the issuance of the revenue bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.045. NOTICE; PETITION FOR ELECTION. (a) Before the directors authorize the issuance of bonds other than refunding bonds, the directors shall prepare and publish a notice of:

(1) its intention to adopt a resolution authorizing the issuance of bonds;

(2) the date it intends to adopt the resolution; and

(3) the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the county and the municipality. The first notice must be published not later than the 15th day before the date set for adopting the bond resolution.

(c) A petition requesting an election on the proposition for the issuance of the bonds may be presented to the hospital board secretary before the date set for adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county and in any part of the municipality that is not in the county.

(d) The directors shall order an election requested under Subsection (c) in the county and any part of the municipality that is not in the county. The election shall be held substantially as provided by Chapter 1251, Government Code. The board may issue the bonds if the issuance is approved at the election.

(e) The bond resolution may be adopted on the date set for the adoption, or not later than the 30th day after that date, if no petition is filed, and the bonds may be issued and delivered without an election or the creation of an encumbrance.

(f) The directors may order an election on the issuance of the bonds on their own motion if they consider it advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.260, eff. Sept. 1, 2001.

Sec. 265.046. REFUNDING BONDS. Any bonds issued under this subchapter may be refunded by the issuance of refunding bonds in the manner provided by this subchapter for the issuance of other bonds, except the refunding bonds may be issued to be exchanged for the bonds being refunded. If the refunding bonds are issued to be exchanged, the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the proceedings authorizing the refunding bonds. The exchange may be made in one delivery or several installment deliveries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.047. EXAMINATION, APPROVAL, AND REGISTRATION OF BONDS.

(a) The board shall submit to the attorney general for examination the bonds issued under this subchapter and the proceedings authorizing their issuance.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized in

accordance with this subchapter, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are valid and binding obligations in accordance with their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.048. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this subchapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) an interest and sinking fund or other public fund of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic.

(b) The bonds are eligible and lawful security for the deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic. The bonds may secure those deposits in an amount up to the value of the bonds, if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.049. CHARGES FOR SERVICES AND FACILITIES. The board shall operate its hospital facilities for the use and benefit of the public, but shall establish and collect charges for services and facilities that are sufficient combined with other revenue and income to:

- (1) pay all expenses related to ownership, operation, and

maintenance of its hospital facilities;

(2) pay principal of and interest on its bonds; and

(3) create and maintain reserves and any other funds provided for in the proceedings authorizing the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.050. DEPOSITORY. The board may:

(1) select a depository in the same manner that a municipality or county may select a depository under Chapter 105 or Chapter 116, Local Government Code; or

(2) execute a depository contract with a depository selected by the municipality or the county on the same terms as the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.051. INVESTMENT OF FUNDS. (a) The law relating to security for and investment of municipal or county funds applies to hospital board funds. A bond resolution or trust indenture executed for hospital board bonds may further restrict the security for and investment of hospital board funds.

(b) The hospital board may invest, until needed, all or part of its bond proceeds in direct obligations of the United States to the extent authorized in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.052. EMINENT DOMAIN. (a) The hospital board may acquire the fee simple title to or any other interest in land and other property by condemnation under Chapter 21, Property Code, to carry out any power, duty, or function under this subchapter.

(b) The board has the same rights as a county or municipality under Section 21.021, Property Code.

(c) The board shall determine the amount and character of the interest in land or other property to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER E. SALE, LEASE, OR CLOSING**

Sec. 265.071. OFFICIAL ACTION. (a) The commissioners court by order and the governing body of a municipality by ordinance may order the sale, lease, or closing of all or part of a joint municipal and county hospital, including real property, owned and operated by the county and municipality.

(b) The order and ordinance must include a finding that the sale, lease, or closing is in the best interest of the residents of the county or municipality, respectively.

(c) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 265.072.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.072. PETITION AND ELECTION. (a) A petition requesting an election on the sale or closing of the hospital may be presented to the commissioners court and the municipal governing body before the 31st day after the date the commissioners court and the governing body order the sale or closing.

(b) The petition must be signed by at least 10 percent of the qualified voters of the county and any part of the municipality that is not in the county.

(c) On receipt of the petition, the commissioners court and the governing body shall order and conduct the election. The commissioners court and the governing body may sell or close the hospital only if a majority of the qualified voters voting at the election approve the sale or closing.

(d) The number of qualified voters of the county and any part of the municipality that is not in the county is determined according to the most recent official list of registered voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBTITLE D. HOSPITAL DISTRICTS****CHAPTER 281. HOSPITAL DISTRICTS IN COUNTIES OF AT LEAST 190,000****SUBCHAPTER A. CREATION OF DISTRICT**

Sec. 281.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.002. DISTRICT AUTHORIZATION. (a) A county with at least 190,000 inhabitants that does not own or operate a hospital system for indigent or needy persons may create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) A county with at least 190,000 inhabitants that owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, may create a countywide hospital district and take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(c) A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.208, eff. Sept. 1, 2003.

Sec. 281.003. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district is to be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion and shall order the election on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) The election shall be held on the first authorized uniform

election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.004. **BALLOT PROPOSITIONS.** (a) Except as provided by Subsection (a-1) or (b), the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district."

(a-1) The ballot for an election under this chapter held in a county with a population of more than 800,000 that is not included in the boundaries of a hospital district before September 1, 2003, shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 25 cents on each \$100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this chapter shall contain the proposition prescribed by Subsection (a) or (a-1), as appropriate, followed by ", and the assumption by the district of all outstanding bonds previously issued for hospital purposes by \_\_\_\_\_ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.209, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 281.021. **APPOINTMENT OF BOARD.** (a) The commissioners court of a county in which a district is created under this chapter shall appoint a board of hospital managers composed of not less than five or more than seven members.

(b) The commissioners court of a county with a population of more than 1.8 million but less than 1.9 million in which a district is created under this chapter shall appoint a board composed of not less than five or more than 15 members.

(c) The Harris County Commissioners Court shall appoint a board



composed of not less than seven or more than nine members.

(d) If a district is created under this chapter in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003, the district shall be governed by a nine-member board of hospital managers, appointed as follows:

(1) the commissioners court of the county shall appoint four members;

(2) the governing body of the municipality with the largest population in the county shall appoint four members; and

(3) the commissioners court and the governing body of the municipality described by Subdivision (2) shall jointly appoint one member.

(e) The El Paso County Commissioners Court shall appoint a board composed of seven members, and shall by order provide for the qualifications of appointees to the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 72, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 36, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.210, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 35, eff. September 1, 2011.

Sec. 281.022. TERM. (a) A board member serves a two-year term, except that the commissioners court may make some initial appointments for one year in order to stagger terms.

(b) The members of the board of hospital managers of the Nueces County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

(c) The members of a board of hospital managers appointed under Section 281.021(d) serve staggered four-year terms, with as near as possible to one-fourth of the members' terms expiring each year. The

terms of the members appointed under that section are as follows:

(1) the members appointed solely by the governing body of the municipality with the largest population in the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term;

(2) the members appointed solely by the commissioners court of the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term; and

(3) the member appointed jointly by the governing body of the municipality described by Subdivision (1) and the commissioners court serves a four-year term.

(d) The members of the board of hospital managers of the El Paso County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.211, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 2, eff. September 1, 2009.

Sec. 281.0221. TERM LIMIT. A member of the board of hospital managers of the El Paso County Hospital District may not serve more than two consecutive three-year terms and is not eligible for reappointment to the board until the second anniversary of the date the member's eligibility expires under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 3, eff. September 1, 2009.

Sec. 281.0222. QUALIFICATIONS FOR OFFICE. (a) This section applies only to the El Paso County Hospital District.

(b) The El Paso County Commissioners Court may not appoint a person to the board of hospital managers of the district if the person is:

(1) an employee of El Paso County;  
(2) a district employee; or  
(3) related within the third degree of consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, to a member of the commissioners court or to a person described by Subdivision (1) or (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 2, eff. June 17, 2011.

Sec. 281.023. OFFICERS. (a) The board shall elect from among its members:

- (1) a chairman; and
- (2) a vice-chairman to preside in the chairman's absence.

(b) The board shall appoint a board member or the administrator to serve as secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.024. COMPENSATION. A board member serves without compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.025. RECORD OF BOARD MEETING. (a) The board shall require the secretary to keep a suitable record of each board meeting.

(b) The presiding member shall read and sign the record after the meeting, and the secretary shall attest to the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.026. ADMINISTRATOR; DUTIES. (a) The board shall appoint a person qualified by training and experience as the administrator for the district.

(b) The administrator serves at the will of the board and for terms of not more than four years.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than \$10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

- (1) perform duties required by the board;
- (2) supervise the work and activities of the district; and
- (3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 424 (S.B. 1769), Sec. 1, eff. June 17, 2005.

Sec. 281.027. ASSISTANT ADMINISTRATOR. (a) If the administrator is incapacitated, absent, or unable to perform the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's powers or duties, subject to limitations prescribed by board order.

(b) The assistant administrator or other persons shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.028. STAFF. (a) The board may appoint doctors to the district's staff and hire technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract of a person appointed or hired under this section may not exceed four years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 110, Sec. 1, eff. Aug. 26, 1991.

Sec. 281.0281. EMPLOYMENT OF HEALTH CARE PROVIDERS. (a) This section applies only to a district created in a county with a

population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board, as it considers necessary for the efficient operation of the district, may employ:

(1) physicians as provided in this section and Sections 162.001(c-4) and (c-5), Occupations Code; and

(2) dentists or other health care providers.

(c) The board may employ a licensed physician as a medical director if the physician:

(1) provides only policy, administrative, and managerial services; and

(2) does not provide direct patient care or otherwise practice medicine, as defined by Section 151.002, Occupations Code, at or for the district.

(d) This section does not authorize the board to supervise or control the practice of medicine or permit the unauthorized practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. [1107](#)), Sec. 4, eff. September 1, 2007.

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) The board of the Dallas County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Dallas County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Dallas County Hospital District under Subsection (a) to employ physicians shall apply only as necessary for the district to fulfill the district's statutory mandate to provide medical and dental care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The Dallas County Hospital District shall establish a committee consisting of at least five actively practicing physicians

who provide care in the district. The committee shall approve existing policies or adopt new policies, if no policies exist, to ensure that a physician who is employed by the district is exercising the physician's independent medical judgment in providing care to patients.

(f) The chair of the committee must be a member of the executive committee of the Dallas County Hospital District's medical staff.

(g) The policies adopted or approved by the committee shall include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(h) Each member of a committee shall provide biennially to the chief medical officer of the Dallas County Hospital District a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all committee matters, including matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the committee member's best efforts to ensure compliance with the Dallas County Hospital District's policies that are adopted or established by the committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) The committee shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

(j) For all matters relating to the practice of medicine, each physician employed by the board shall ultimately report to the chief medical officer of the Dallas County Hospital District.

Added by Acts 2009, 81st Leg., R.S., Ch. 823 (S.B. [1705](#)), Sec. 1, eff. June 19, 2009.

Sec. 281.0283. HARRIS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Harris County Hospital District may appoint, contract for, or employ physicians as the board

considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Harris County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Harris County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive board of the Harris County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive board under this section must include:

(1) policies relating to:

- (A) governance of the medical executive board;
- (B) credentialing;
- (C) quality assurance;
- (D) utilization review;
- (E) peer review;
- (F) medical decision-making; and
- (G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive board.

(g) The medical executive board and the board of the Harris County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive board under this section and a policy of the Harris County Hospital District.

(h) A member of the medical executive board who is a physician shall provide biennially to the chair of the medical executive board a signed, verified statement indicating that the board member:

- (1) is licensed by the Texas Medical Board;
- (2) will exercise independent medical judgment in all medical executive board matters, including matters relating to:
  - (A) credentialing;

- (B) quality assurance;
- (C) utilization review;
- (D) peer review;
- (E) medical decision-making; and
- (F) due process;

(3) will exercise the board member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive board; and

(4) will report immediately to the Texas Medical Board any action or event that the board member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Harris County Hospital District shall ultimately report to the chair of the medical executive board for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 975 (H.B. 1568), Sec. 1, eff. June 17, 2011.

Sec. 281.0284. BEXAR COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Bexar County Hospital District may employ physicians as the board considers necessary for the efficient operation of the district.

(b) A physician employed by the Bexar County Hospital District under this section must practice with a nonprofit health organization certified by the Texas Medical Board and created by the Bexar County Hospital District.

(c) The term of an employment contract entered into under this section may not exceed four years.

(d) This section may not be construed as authorizing the board of the Bexar County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 524 (H.B. 2351), Sec. 1, eff. June 17, 2011.

Redesignated from Health and Safety Code, Section 281.0283 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(26), eff. September 1, 2013.



Sec. 281.0285. EL PASO COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS, DENTISTS, AND OTHER HEALTH CARE PROVIDERS. (a) The board of the El Paso County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the El Paso County Hospital District to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3, Occupations Code, or to supervise or control the practice of dentistry as prohibited by Subtitle D, Title 3, Occupations Code.

(d) The authority granted to the board of the El Paso County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the El Paso County Hospital District, in accordance with the bylaws adopted by the board of the El Paso County Hospital District, shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

- (1) policies relating to:
  - (A) governance of the medical executive committee;
  - (B) credentialing;
  - (C) quality assurance;
  - (D) utilization review;
  - (E) peer review;
  - (F) medical decision-making; and
  - (G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the El Paso County Hospital District shall jointly develop and implement a

conflict management process to resolve any conflict between the policies adopted under this section and a policy of the El Paso County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the El Paso County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 417 (S.B. 860), Sec. 1, eff. June 17, 2011.

Sec. 281.0286. TARRANT COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Tarrant County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Tarrant County Hospital District to supervise or control the

practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Tarrant County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the Tarrant County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

- (A) governance of the medical executive committee;
- (B) credentialing;
- (C) quality assurance;
- (D) utilization review;
- (E) peer review;
- (F) medical decision-making; and
- (G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the Tarrant County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive committee under this section and a policy of the Tarrant County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the member of the medical executive committee:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all

medical executive committee matters, including matters relating to:

- (A) credentialing;
- (B) quality assurance;
- (C) utilization review;
- (D) peer review;

- (E) medical decision-making; and
- (F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Tarrant County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 3, eff. September 1, 2011.

Sec. 281.029. RETIREMENT PROGRAMS. (a) With the approval of the commissioners court, the board may contract with the state or the federal government as necessary to establish or continue a retirement program for the benefit of district employees.

(b) In addition to the retirement programs authorized by Subsection (a), the board may establish a retirement program the board considers necessary and advisable for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.030. SEAL. The board shall have a seal engraved with the district's name. The seal shall be kept by the secretary and used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.031. REMOVAL OF BOARD MEMBER. (a) A member of the board of hospital managers of the El Paso County Hospital District is considered to have resigned the member's position if the member:

- (1) is absent from all the regularly scheduled board and

committee meetings that the member is eligible to attend during a 90-day period;

(2) is absent from more than half of the regularly scheduled board and committee meetings that the member is eligible to attend during a 12-month period;

(3) fails to pay a local tax, including an ad valorem tax, when due; or

(4) would be ineligible to serve on the board as provided by Section 281.0222.

(b) A resignation under Subsection (a) is effective immediately on the date the absence, disqualifying conduct, or ineligibility specified by Subsection (a) occurs or exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 3, eff. June 17, 2011.

#### **SUBCHAPTER C. GENERAL POWERS AND DUTIES**

Sec. 281.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) Except as provided by Subsection (e), on the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county and municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer

to the district:

(1) all joint or separate county and municipal funds that are the proceeds of any bonds assumed by the district under Section 281.044; and

(2) all unexpended joint or separate county and municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created, to be used by the district to operate and maintain those facilities for the remainder of the year.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) On the creation of the district, the board of managers of the county or municipal hospital system shall continue to manage and control the property and affairs of that system until the board of the district is appointed and organized. At that time, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

(e) A county or municipality transferring property or funds under this section is not required to transfer to the district:

(1) a medical facility used primarily for the treatment of inmates of a jail or any other correctional facilities, including juvenile justice facilities;

(2) property owned by the municipality that is used in connection with the provision of utility services, including electricity, water, wastewater, and sewer services;

(3) any real property or other assets related to a medical clinic facility on which construction has begun, but has not been completed, by the date on which the board members have been appointed and qualified to serve;

(4) a building and related land owned by the county or municipality that are used for purposes related or unrelated to the hospital or hospital system, except that:

(A) if the county or municipality retains ownership of the building and related land, the county or municipality shall lease the space used for hospital or hospital system purposes to the district for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity; or

(B) if the county or municipality transfers the building and related land to the district, the district shall lease to the transferring entity the space not used for hospital or hospital system purposes for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity;

(5) any or all of the public health services and related facilities of the county or municipality, other than a hospital or hospital district, unless the transfer of the public health services or a related facility to the district is mutually agreed to by the district and the transferring entity; or

(6) an ambulance service, emergency medical service, search and rescue service, or medical transport service that is owned or operated by the county or municipality, unless the transfer of all or part of the service and related buildings and equipment to the district is mutually agreed to by the district and the transferring entity.

(f) A transfer of an asset under this section, including a federally qualified health center, that would violate federal or state law unless a waiver or other authorization or approval is granted by a federal or state agency may not occur until the required waiver, authorization, or approval is obtained. A facility designated as a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B), as amended, may not be transferred to the district until the district board has confirmed that the transfer will not jeopardize the federal designation of that facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.212, eff. Sept. 1, 2003.

Sec. 281.042. RETURN OF TRANSFERRED PROPERTY TO COUNTY OR MUNICIPALITY. (a) The board by deed may transfer to the county or a municipality any property that:

(1) was transferred to the district by that county or municipality under Section 281.041; and

(2) the board considers is not and will not be useful for the purposes for which the property was originally transferred to the district.

(b) The transfer may be made on terms determined suitable by

the board and the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes, without prejudice to the rights of third parties, any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care, including mental health care, to indigent residents of the county or municipality before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.213, eff. Sept. 1, 2003.

Sec. 281.044. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) On the creation of the district, the county or a municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of the bonds or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds by the county or municipality, or both, to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the county or municipality, or both, may not sell the



bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.045. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems under Chapter 265 shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.046. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. Beginning on the date on which taxes are collected for the district, the district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0465. NURSING SERVICES FOR SCHOOL DISTRICTS. A hospital district may contract with a school district included in the hospital district to provide nursing services and assistance to employees or students of the school district.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 38, eff. May 30, 1995.

Sec. 281.047. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0475. RENAMING DISTRICT. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) With the approval of the commissioners court, the board may rename the district.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 10, eff. September 1, 2005.

Sec. 281.048. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.049. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES.

(a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.

(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.050. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) With the approval of the commissioners court, the board may construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a

hospital, building, or other facility or to provide a service required by the district. Approval of the commissioners court shall be required for the sale or lease of a hospital facility regardless of the provisions of Section 285.051.

(b) Notwithstanding any other law, the board may, with the approval of the commissioners court, lease undeveloped real property for not more than 50 years to provide for the development and construction of facilities designed to generate revenue for the financial benefit of the district. The board, directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into a lease under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 535 (S.B. 1478), Sec. 1, eff. June 19, 2009.

Sec. 281.051. CONTRACTING AUTHORITY. (a) With the approval of the commissioners court, the board may, in performing its powers under Section 281.050, contract or cooperate with:

- (1) the federal government;
- (2) this state;
- (3) another governmental entity; or
- (4) a privately owned or operated hospital.

(b) With the approval of the commissioners court, the board may contract with:

- (1) a county for care and treatment of the county's sick, diseased, or injured persons; and
- (2) this state or the federal government for care and treatment of sick, diseased, or injured persons for whom the state or federal government is responsible.

(c) The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or

competence and that unfairly discriminate against small businesses and businesses owned by members of a minority or by women. These barriers may include contracting procedures and contract specifications or conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 996, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 137, Sec. 2, eff. Sept. 1, 1997.

Sec. 281.0511. CONTRACTING AUTHORITY OF CERTAIN DISTRICTS; LEASE OF PROPERTY OR HOSPITAL FACILITIES. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) Notwithstanding Sections 281.050 and 281.051, the board may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services.

(c) Notwithstanding Section 281.050, the board may lease any property or hospital facility without the approval of the commissioners court. The board may enter into a lease under this subsection only after an open meeting in accordance with Chapter 551, Government Code, including Section 551.072, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. [1107](#)), Sec. 5, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. [1352](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. [1352](#)), Sec. 2, eff. June 17, 2011.

Sec. 281.0512. CONTRACT TO PROVIDE ADMINISTRATIVE FUNCTIONS AND SERVICES. (a) This section applies only to a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B) or a federally qualified health center look-alike organized and operated under the authority of and in compliance with 42 U.S.C. Section 254b that is substantially devoted to providing services to socially and economically disadvantaged individuals in the geographical area of

the district.

(b) The board may contract with a federally qualified health center or a federally qualified health center look-alike to perform for the center administrative functions and services that the district and the center may perform independently.

Added by Acts 2011, 82nd Leg., R.S., Ch. 633 (S.B. 847), Sec. 1, eff. June 17, 2011.

Sec. 281.0514. HARRIS COUNTY HOSPITAL DISTRICT; CONTRACT WITH CERTAIN HOSPITALS. (a) The Harris County Hospital District may contract for indigent health care services with at least one hospital that is:

- (1) located in the district;
- (2) exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under any subdivision of Section 501(c) of that code; and
- (3) substantially devoted to providing hospital services to socially and economically disadvantaged individuals in the geographical area of the district.

(b) A contract under this section is subject to Section 281.051(a).

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.24, eff. Sept. 1, 1999.

Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE ORGANIZATION. A district may establish a health maintenance organization in accordance with the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) to provide or arrange for health care services for the residents of the district.

Added by Acts 1993, 73rd Leg., ch. 908, Sec. 2, eff. Aug. 30, 1993.

Sec. 281.0517. INTEGRATED HEALTH CARE SYSTEM. (a) In this section:

- (1) "Integrated health care system" means a nonprofit

corporation established and operated by a district and a medical school to provide or arrange for comprehensive health care services for residents of the district.

(2) "Provider" means a physician or a provider as defined under Section 843.002, Insurance Code.

(3) "Medical school" means a medical school governed by Chapter 110, Education Code.

(b) The El Paso County Hospital District and a medical school may establish and operate an integrated health care system.

(c) To provide or arrange for comprehensive health care services, an integrated health care system created under this section may:

(1) own, acquire, lease, or contract for all necessary assets;

(2) enter into contracts with providers for the provision of health care services directly or indirectly through subcontract;

(3) provide or enter into a contract with an individual or business entity under which the individual or entity provides necessary management or administrative services for the system and the system's providers;

(4) enter into a contract or other agreement with a business or governmental entity under which the system is paid to provide health care services; and

(5) enter into a fee-for-service, capitated, or risk-sharing health care service arrangement.

(d) An integrated health care system that recites in its articles of incorporation that it is created under this section is:

(1) subject to:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code;

(C) Chapter 843, Insurance Code;

(D) Chapter 844, Insurance Code; and

(E) Chapter 262, Local Government Code; and

(2) a unit of local government for the purposes of Chapter 101, Civil Practice and Remedies Code.

(e) Notwithstanding Subsection (d)(1)(A), an integrated health care system created under this section may hold a closed meeting to deliberate:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if

an open meeting would have a detrimental effect on the position of the system in the bid or negotiation process; or

(2) a proposed new service or product line, if the meeting is held before public announcement of the service or product line.

(f) Notwithstanding Subsection (d)(1)(B), information relating to the following is confidential and not subject to disclosure:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if disclosure would have a detrimental effect on the position of the integrated health care system in the bid or negotiation process; or

(2) a proposed new service or product line, if disclosure is requested before public announcement of the service or product line.

(g) Subject to the requirements and limitations of the local health care market, an integrated health care system created under this section shall make reasonable efforts to include in its provider group community providers other than the medical school and a hospital of the El Paso County Hospital District.

Added by Acts 1997, 75th Leg., ch. 947, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.528, 10A.529, eff. Sept. 1, 2003.

Sec. 281.0518. DALLAS COUNTY HOSPITAL DISTRICT; AUTHORITY TO SELL OR LICENSE INTELLECTUAL PROPERTY. (a) The Dallas County Hospital District or a nonprofit corporation formed by the district may:

(1) sell or license technology or intellectual property that is owned by or licensed to the district or a nonprofit corporation formed by the district;

(2) enter into a contract to provide services related to technology or intellectual property sold or licensed under Subdivision (1);

(3) contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in an activity authorized under Subdivision (1) or (2); or

(4) take any other action necessary to protect or benefit from the exclusivity of technology and intellectual property owned by or licensed to the district or a nonprofit corporation formed by the

district, including applying for, acquiring, registering, securing, holding, protecting, and renewing under applicable provisions of state, federal, or international law:

- (A) a patent;
- (B) a copyright;
- (C) a trademark, service mark, collective mark, or certification mark; or
- (D) any other form of protection of intellectual property provided by law.

(b) Information prepared or compiled by or for the Dallas County Hospital District or a nonprofit corporation formed by the district relating to the development of technology or intellectual property to which this section applies is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1375 (S.B. 1916), Sec. 1, eff. June 14, 2013.

Sec. 281.052. COUNTY AUTHORITY TO SELL, LEASE, AND PURCHASE FACILITIES FOR DISTRICT PURPOSES. (a) The commissioners court of a county in which a district is created under this chapter may sell real or personal property in order to enter into a contract to:

- (1) lease or rent buildings, land, facilities, equipment, or services from others for district purposes;
- (2) construct, repair, renovate, improve, or enlarge buildings, land, facilities, or equipment for district purposes; and
- (3) pay regular monthly utility bills, including electricity, gas, and water bills, for the leased or rented buildings, land, facilities, equipment, or services.

(b) The commissioners court may pay for the facilities, equipment, and services and for the regular monthly utility bills for those facilities, equipment, and services from the county's general fund if a majority of the commissioners court considers the facilities, equipment, and services essential to the proper administration of the county.

(c) A construction project under this section shall be let by contract. The contract must contain the prevailing wage for mechanics, laborers, and other persons employed in the project. The Tarrant County Commissioners Court shall set the prevailing wage in



the amount set by the commissioners court for all construction projects involving the expenditure of county funds.

(d) On or before the expiration of the lease or rental contract, the county may purchase the facilities with county general funds if a majority of the commissioners court considers the purchase price reasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.053. DISTRICT INSPECTIONS. (a) The district may be inspected by a representative of the commissioners court, the Texas Board of Health, or the Texas Department of Human Services.

(b) A district officer shall:

- (1) admit an inspector into the district facilities; and
- (2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.054. EMINENT DOMAIN. (a) The district has the power of eminent domain to acquire any interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit with the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

- (1) pay in advance or give bond or other security for costs in the trial court;
- (2) give bond for the issuance of a temporary restraining order or a temporary injunction; or
- (3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.055. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.056. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

(b) Except as provided by Subsection (b-1), a district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district.

(b-1) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a district located in:

- (1) a county with a population of 800,000 or more that borders the United Mexican States;
- (2) a county with a population of 3.4 million or more; or
- (3) a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(c) A board that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel when the board determines that additional counsel is advisable. A board that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters when the board determines that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 3.08, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 11, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 36, eff. September 1, 2011.

Sec. 281.0565. CHARITABLE ORGANIZATIONS. (a) In this section, "charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code.

(b) A district may create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district.

(c) A charitable organization created by a district under this section is a unit of local government for purposes of Chapter 101, Civil Practice and Remedies Code.

(d) A district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003, may make a capital or other financial contribution to a charitable organization created by the district to provide regional administration and delivery of health care services to or for the district.

Added by Acts 1997, 75th Leg., ch. 104, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 6, eff. September 1, 2007.

Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS. (a) The board of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, or the El Paso County Hospital District may employ and commission peace officers for the district.

(b) The jurisdiction of a peace officer commissioned under this section includes the property owned or controlled by the district that employs the peace officer and any street abutting, right-of-way over or through, or easement in the property.

(c) In a district peace officer's jurisdiction, the peace officer has the authority granted by Chapter 14, Code of Criminal Procedure. The peace officer may also make an arrest without a warrant in the officer's jurisdiction if the offense involves injury or harm to any property owned or controlled by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 853, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 888, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 402 (S.B. 601), Sec. 1, eff. June 17, 2011.

#### **SUBCHAPTER D. MEDICAL TREATMENT AND CARE**

Sec. 281.071. PAYMENT AND SUPPORT. (a) The administrator shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to district facilities from the county in which the hospital is located. If the administrator finds that the patient or the patient's relatives are liable for the patient's care and treatment in whole or in part, the administrator shall issue an order directing the patient or the patient's relatives to pay to the district treasurer a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) An administrator may collect an amount owed under this section from the estate of a patient, or the relatives legally

responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a deceased person.

(d) If the administrator finds that the patient and the patient's relatives are not able to pay in whole or in part, the district shall without charge supply the care and treatment to the patient.

(e) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over this ability or if there is doubt in the mind of the administrator over this ability. The court shall hear witnesses and issue any order that may be proper.

(f) An appeal from an order of the county court must be made to a district court in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.072. REIMBURSEMENT FOR SERVICES. The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.073. DISPOSITION OF DISTRICT RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of a district is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the Texas Department of Health and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 118, eff. Sept. 1, 1991.

**SUBCHAPTER E. DISTRICT FINANCES**

Sec. 281.091. BUDGET. (a) The administrator shall prepare an annual budget under the board's direction.

(b) The budget and budget revisions must be approved by the board and then shall be presented to the commissioners court for final approval.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.092. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the board, commissioners court, Texas Board of Health, and comptroller.

(b) The report must:

(1) consist of a sworn statement of all money and choses in action received by the administrator and their disposition; and

(2) show in detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.093. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the depository previously selected by the county.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for four years and until its successor is selected and qualified.

(c) The board may extend any contract with a depository to the next October and then select a depository for the following four years.

(d) All income of the district shall be deposited in the district depository.

(e) Warrants against district funds do not require the county clerk's signature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 246, Sec. 1, eff. Aug. 30, 1993.

Sec. 281.094. USE OF CERTAIN FUNDS BY THE NUECES COUNTY HOSPITAL DISTRICT. (a) With the approval of the Nueces County Commissioners Court, the board of the Nueces County Hospital District may use funds made available to the district from sources other than a tax levy to fund health care services, including public health services, mental health and mental retardation services, emergency medical services, health services provided to persons confined in jail facilities, and for other health related purposes.

(b) The board of the Nueces County Hospital District may use funds made available to the district from any source to fund:

(1) indigent health care; and

(2) intergovernmental transfers from the district to the state for use as the nonfederal share of Medicaid supplemental payment program or waiver program payments for eligible health care providers located inside or outside the district's boundaries, including, but not limited to, any payments available through a waiver granted under Section 1115, Social Security Act (42 U.S.C. Section 1315), or other similar payment programs, subject to the limitation prescribed by Subsection (c).

(c) Neither the funds comprising an intergovernmental transfer described by Subsection (b)(2) nor any federal funds obtained from any such transfer may be used by the board of the Nueces County Hospital District or any entity to expand eligibility for medical assistance (Medicaid) under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 1999, 76th Leg., ch. 1133, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1373 (S.B. [1863](#)), Sec. 1, eff. June 14, 2013.

Sec. 281.095. PROHIBITION AGAINST PARTICIPATION IN TAX INCREMENT FINANCING BY CERTAIN HOSPITAL DISTRICTS. (a) In this section, "district" means Bexar County Hospital District, Nueces

County Hospital District, El Paso County Hospital District, or Harris County Hospital District.

(b) The district may not enter into a contract or agreement to pay into a tax increment fund any of the district's tax increment produced from property located in a reinvestment zone under Chapter 311, Tax Code. This subsection does not affect the validity of an agreement entered into by the district before September 1, 2001, to pay a portion of the district's tax increment into a tax increment fund under Chapter 311, Tax Code.

(c) The proceeds of a tax imposed under Section 281.121 may not be used to make a payment into a tax increment fund under Chapter 311, Tax Code, if that payment is prohibited by this section.

(d) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, on or after September 1, 2001, may not include any of the district's tax increment or any other funds derived from the district as a source of revenue to finance or pay project costs.

(e) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to:

(1) increase the percentage of the district's tax increment to be contributed to a tax increment fund;

(2) increase the time during which the district is to contribute any of the district's tax increment to a tax increment fund;

(3) allow or require the district, if it was not included in the originally approved project plan or reinvestment zone financing plan, to contribute any of the district's tax increment or other money to a tax increment fund; or

(4) allow the district to pay into a tax increment fund any of the district's tax increment derived from property added to the reinvestment zone on or after September 1, 2001.

(f) An agreement entered into by the district under Section 311.013(f), Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to include any of the conditions prohibited by Subsection (e).

Added by Acts 2001, 77th Leg., ch. 588, Sec. 1, eff. Sept. 1, 2001.



Sec. 281.096. AUTHORITY TO TAKE ACTIONS RELATING TO AD VALOREM TAXES. (a) With respect to the imposition or collection of an ad valorem tax imposed for the benefit of a hospital district, the commissioners court of the county in which the district is located has the authority assigned by law to the governing body of the hospital district, including the authority to:

(1) adopt an exemption, partial exemption, or other form of relief from an ad valorem tax;

(2) elect to tax property that would otherwise be exempt from an ad valorem tax; and

(3) exercise a power granted to a taxing unit under Section 6.30, Tax Code.

(b) The board of a hospital district may not exercise a power granted by Subsection (a) to the commissioners court with respect to the imposition or collection of an ad valorem tax imposed for the benefit of the hospital district.

Added by Acts 2003, 78th Leg., ch. 102, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. DISTRICT BONDS AND CERTIFICATES OF OBLIGATION**

Sec. 281.101. GENERAL OBLIGATION BONDS. The commissioners court, in the district's name and on the district's faith and credit, may issue and sell bonds to acquire, construct, equip, or enlarge the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.102. BOND ELECTION. (a) The district may not issue bonds, excluding refunding bonds, unless the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The commissioners court may order a bond election on its own motion or on the board's request.

(c) The election must be:

(1) called and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide elections.

(d) The district shall pay for the cost of the election and

shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.261, eff. Sept. 1, 2001.

Sec. 281.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund and pay any outstanding bonded indebtedness of the district, including assumed bonded indebtedness.

(b) The refunding bonds must be issued in the manner provided for other bonds of the district except that an election is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## Sec. 281.105. APPROVAL AND REGISTRATION OF BONDS. (a)

District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## Sec. 281.106. AUTHORITY TO ISSUE CERTIFICATES OF OBLIGATION.

With the approval of the commissioners court, the board may issue certificates of obligation in accordance with Subchapter C, Chapter 271, Local Government Code, for district purposes as authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 47, Sec. 2, eff. Sept. 1, 2003.

## Sec. 281.107. ALTERNATIVE FINANCING AND ELECTION PROCEDURES.

(a) This section is applicable to any hospital district that was created pursuant to the authority granted by Section 4, Article IX, Texas Constitution, is operating under this chapter, and has previously held an election at which the voters approved the levy and assessment of an ad valorem tax at a rate not greater than 75 cents per \$100 of assessed valuation of taxable property within the district.

(b) The commissioners court may, in the district's name, call, order, and hold an election and submit thereat the proposition and ballot prescribed in Subsections (c) and (d) if the district's board of managers:

(1) finds that capital funds are needed to acquire, construct, equip, and improve the district's hospital system;

(2) finds that financing such improvements through the issuance of combination tax and revenue bonds or other obligations is the best available method to provide the capital funds that are needed to furnish the highest quality of medical treatment and hospital care to persons residing in the district; and

(3) requests that the commissioners court call and hold an election under the alternative procedures authorized by this section.

(c) The official proposition submitted to the voters at an election held under this section shall include, at a minimum, the information included in the election order as prescribed by Subsection (e).

(d) The ballot shall be arranged in a manner that will permit the voters to vote for or against the following summary of the proposition:

"Authorizing (insert name of district) to (insert description of proposed district improvement) and to pledge (insert amount of combination tax and revenue bonds or other obligations) for the purpose of financing the proposed hospital district improvement project."

(e) The election order shall include:

(1) a statement of the maximum aggregate principal amount of bonds and obligations having maturities longer than five years that will be secured by the hospital system and tax revenues authorized by this section if approved by the voters at the election unless another election is held and the voters approve an increased amount; and

(2) a general description of the district's proposed financing and improvement plans, including:

(A) the expected uses of the proposed improvements to the hospital system according to the proposed plans;

(B) estimates of the costs of the proposed improvements, estimates of the amount of the expected revenues that will be received from the operation of the proposed improvements, and estimates of the amount of revenues, including tax revenues, that will be required to pay the long-term combination tax and revenue bonds and other obligations when due, based on the interest rate and other assumptions stated in the order; and

(C) any other matter deemed by the board of managers to be appropriate to inform the voters of the details of the proposed improvements to the district's hospital system and the financing plans.

(f) An election conducted pursuant to this section shall be conducted in accordance with the procedures provided in Section 281.102.

(g) If a majority of the votes received at the election favor

the proposition submitted at the election, the commissioners court is authorized to issue and execute, on behalf and in the name of the district, combination tax and revenue bonds and other short-term and long-term obligations in the amounts and upon the terms recommended and at the times requested by the board of managers. If requested by the board of managers, the commissioners court may also, by order, extend or confirm the pledge to previously issued bonds and other obligations of the district.

(h) Bonds and other short-term or long-term obligations that are secured in the manner authorized by this section shall be payable from and secured by the revenues of the district's hospital system and from the ad valorem tax revenues of the district to the extent prescribed and agreed in the orders, resolutions, indentures, contracts, or other documents authorizing their issuance or execution. The district, through the commissioners court, shall annually levy, assess, and collect ad valorem taxes on taxable property in the district, within the limited tax rate previously authorized by the voters, when and as required by the proceedings authorizing the bonds and other obligations.

(i) Each district that utilizes the alternative procedures permitted by this section is authorized to enter into, execute, and deliver any of the credit agreements permitted by Chapter 1371, Government Code, and to secure them by pledging revenues and taxes to the same extent they are pledged to bonds or other short-term or long-term obligations in accordance with this section.

(j) The portion of the rate of ad valorem tax that is to be levied and assessed each year by or for the district that is allocated by the district to the payment of the principal of and the interest on bonds and other obligations or the maintenance of reserves therefor in accordance with this section shall be applied as a payment on current debt in calculating the current debt rate under the applicable tax rate rollback provisions of Chapter 26, Tax Code.

(k) The procedures authorized by this section are alternative to the provisions of Chapter 284 and the other sections of this chapter and are cumulative of and in addition to any powers granted to any district under those or any other laws.

Added by Acts 2003, 78th Leg., ch. 55, Sec. 1, eff. May 15, 2003.  
Renumbered from Health and Safety Code, Section 281.106 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(48), eff. September 1,

2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 371 (H.B. 1366), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER G. TAXES

Sec. 281.121. TAXES TO PAY BONDS AND CERTIFICATES OF OBLIGATION; TAX ASSESSMENT AND COLLECTION. (a) When the district issues bonds or certificates of obligation payable from and secured by taxes under this chapter, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation. The commissioners court may impose the tax for the entire year in which the district is created in order to finance initial district operation and to pay bonds assumed by the district.

(b) The tax amount:

(1) must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature; and

(2) may not exceed 75 cents on each \$100 of the taxable value of property taxable by the district, or the rate authorized in the election to create the district.

(c) The proceeds of the tax may be used:

(1) to pay the interest on and create a sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system;

(3) if requested by the board and approved by the commissioners court, to make further improvements and additions to the hospital system, including acquiring necessary sites by purchase, lease, or condemnation; and

(4) to pay for certificates of obligation issued under Section 281.106 that are payable from and secured by taxes.

(d) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 47, Sec. 3, 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 198, Sec. 2.2216, eff. Sept. 1, 2003.

Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY GOVERNMENTAL ENTITY. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The commissioners court of the county and the governing body of the municipality with the largest population in the county, in determining the ad valorem tax rate of the county or municipality, as appropriate, for the first year in which the district imposes ad valorem taxes on property in the district, shall:

(1) take into account the decrease in the amount the county or municipality will spend for health care purposes in that year because the district is providing health care services previously provided or paid for by the county or municipality; and

(2) reduce the ad valorem tax rate adopted for the county or municipality, as appropriate, in accordance with the amount of the decrease.

(c) The commissioners court of the county and the governing body of the municipality with the largest population in the county shall retain an independent auditor to verify that the ad valorem tax rate of the county or municipality, as appropriate, has been reduced as required by Subsection (b).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.217, eff. Sept. 1, 2003.

Sec. 281.124. ELECTION TO APPROVE TAX RATE IN EXCESS OF ROLLBACK TAX RATE. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board may hold an election at which the registered voters of the district may approve a tax rate for the current tax year that exceeds the district's rollback tax rate for the year computed under Chapter 26, Tax Code, by a specific rate stated in dollars and cents per \$100 of taxable value.

(c) An election under this section must be held at least 180 days before the date on which the district's tax rate is adopted by the board. At the election, the ballot shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax

rate of \$ (insert total proposed tax rate) per \$100 valuation in (insert district name) for the (insert current tax year) tax year, a rate that exceeds the district's rollback tax rate. The proposed ad valorem tax rate exceeds the ad valorem tax rate most recently adopted by the district by \$ (insert difference between proposed and preceding year's tax rates) per \$100 valuation."

(d) If a majority of the votes cast in the election favor the proposition, the tax rate for the specified tax year is the rate approved by the voters, and that rate is not subject to a rollback election under Section 26.07, Tax Code. The board shall adopt the tax rate as provided by Chapter 26, Tax Code.

(e) If the proposition is not approved as provided by Subsection (c), the board may not adopt a tax rate for the district for the specified tax year that exceeds the rate that was not approved, and Section 26.07, Tax Code, applies to the adopted rate if that rate exceeds the rollback tax rate.

(f) Notwithstanding any other law, if a majority of the votes cast in the election favor the proposition, a governing body with approval authority over the district's budget or tax rate may not disapprove the tax rate approved by the voters or disapprove the budget based solely on the tax rate approved by the voters.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. [1107](#)), Sec. 7, eff. September 1, 2007.

**CHAPTER 282. HOSPITAL DISTRICTS IN COUNTIES OF 75,000 OR LESS**  
**SUBCHAPTER A. CREATION OF DISTRICT**

Sec. 282.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.002. DISTRICT AUTHORIZATION. (a) The commissioners court of a county with a population of 75,000 or less and an assessed property valuation of at least \$200,000,000 may create one or more hospital districts.

(b) The district may include a municipality or town, or a part



of a municipality or town, but the district may not include part of another district.

(c) To be formed the proposed district must be composed of territory having property of an assessed value of more than \$25,000,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.003. CREATION ELECTION REQUIRED. The creation of the district must be approved by a majority of the qualified voters of the area of the proposed district who vote at an election ordered and held for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.004. PETITION FOR ELECTION. (a) To propose the establishment of a district:

(1) a petition for a creation election signed by at least five percent of the qualified property taxpaying voters of the area of the proposed district must be presented to the commissioners court; and

(2) \$200 in cash must be deposited with the county clerk at the time of the presentation of the petition.

(b) The petition must state:

(1) the boundaries of the proposed district;

(2) the public necessity for the proposed district; and

(3) the name of the proposed district which includes the county name.

(c) The petition may include a request for the commissioners court to provide on the ballot at the creation election for voting for or against:

(1) imposing a tax to provide funds to construct, equip, maintain, or purchase hospital buildings or land for the district; or

(2) the issuance of bonds to acquire sites for and to construct hospital buildings and imposing a tax at the rate necessary to create an interest and sinking fund sufficient to pay the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.005. HEARING; ELECTION ORDER. (a) When the petition is presented to the commissioners court, the commissioners court shall:

(1) set a date for a hearing on the petition at a regular session or special session called for that purpose, not less than 30 days nor more than 60 days after the date on which the petition is presented; and

(2) order the county clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order for at least 20 days before the date of the election at the courthouse door and at four other places in the proposed district.

(b) If the court finds at the hearing that the petition meets the requirements of this chapter, the court shall order an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(c) The order must contain a description of the metes and bounds of the proposed district and must set the date of the election.

(d) The ballot for election shall be printed to provide for voting for or against:

(1) the creation of the district; and

(2) if the petition includes a request under Section 282.004(c), the imposition of a tax or the issuance of bonds according to the terms of the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.006. ELECTION COSTS; DISPOSITION OF DEPOSIT. (a) The county clerk shall retain the amount deposited under Section 282.004(a) until the commissioners court declares the election results.

(b) If at the election the majority of the voters approved the creation of the district, the county clerk shall return that amount to the petitioners or the petitioners' agent or attorney.

(c) If at the election the majority of the voters disapproved

the creation of the district, the county clerk shall:

(1) pay from the amount deposited on warrants approved and signed by the county judge, all costs and expenses pertaining to the proposed district, including the costs related to the elections;

(2) return the remaining amount, if any, to the petitioners or the petitioners' agent or attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 282.021. ELECTION OF BOARD. (a) Board members shall be elected from the district at large.

(b) Initial board members shall be elected at the district creation election.

(c) A person who wishes to have his name printed on the ballot as a candidate to serve as an initial district board member must present to the commissioners court a petition requesting that the person's name be placed on the ballot at the district creation election. The petition must be accompanied by a second petition signed by at least 100 qualified voters of the proposed district requesting that the person's name be placed on the ballot as a candidate for board membership. The petitions must be filed with the commissioners court before the third day before the date on which the election order is issued.

(d) The commissioners court shall declare that the five candidates receiving the highest number of votes at the initial election of board members are district board members. When they are qualified under this chapter, the candidates shall serve as district board members.

(e) The initial board members shall serve as district board members until the next regular election of state and county officers. An election for board members shall be held at that time and at the general election in each second year after that time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.0211. OPTIONAL FOUR-YEAR TERMS. (a) The board may, on its own motion, order that board members are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled. The three candidates receiving the highest number of votes at that election serve for a term of four years. The remaining two directors elected at that election serve for a term of two years. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 1, eff. June 16, 1991.

Sec. 282.022. OATH AND BOND. (a) Before assuming the duties of office on the board, each district board member elect must:

(1) take and subscribe an oath before the county judge to faithfully and impartially discharge the duties of a board member and to give an account of the member's activities to the commissioners court when requested to do so; and

(2) execute a good and sufficient bond for \$5,000 payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of the person's duties as a board member.

(b) The county clerk shall file and maintain the oath as part of the district records.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.023. COMPENSATION. A board member serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.024. OFFICERS. The board shall elect from among its members a chairman, a secretary, and other officers the board considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.025. QUORUM; MEETING PROCEDURE AND RECORD. (a) Three board members constitute a quorum.

(b) All board proceedings shall be by motion or resolution and shall be recorded in a book kept for that purpose. The book is a public record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.026. SEAL. The board shall adopt an official seal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.027. SUPERINTENDENT; DUTIES. (a) The board shall appoint a superintendent to serve as the district's chief administrator.

(b) The superintendent serves at the will of the board and is responsible to the board for the efficient administration of hospital affairs.

(c) The superintendent is entitled to compensation as determined by the board.

(d) The superintendent may attend board meetings and meetings of a board committee and may participate in the discussion of matters within the superintendent's functions, but the superintendent may not vote on matters considered by the board.

(e) The superintendent shall:

- (1) control administrative functions of the hospital;
- (2) carry out the board orders;
- (3) ensure that the district complies with state law relating to matters within the superintendent's functions; and
- (4) fully advise the board of the district's financial condition and needs.

(f) At least once a year, the superintendent shall:

- (1) prepare an estimate of administrative expenses for the succeeding fiscal year;
- (2) recommend to the board and estimate the cost of improvements to be made in the succeeding fiscal year;
- (3) certify to the board district bills, allowances, and payrolls, including public works contractors' claims; and
- (4) recommend to the board salary amounts of district

employees under the administrator and a salary scale to be paid for different services required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.028. OTHER OFFICERS AND DISTRICT EMPLOYEES. (a) The board shall appoint other district officers that the board considers necessary.

(b) A person appointed under Subsection (a) serves at the will of the board and is entitled to receive compensation as determined by the board.

(c) The board may contract with or employ legal, technical, and professional assistance and other employees.

(d) If the superintendent is temporarily incapacitated or absent, the board may designate a competent person to perform the superintendent's powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. GENERAL POWERS AND DUTIES**

Sec. 282.041. MANAGEMENT, CONTROL, AND ADMINISTRATION. (a) The board shall manage, control, and administer the district.

(b) The board is a corporate body in the name of the "\_\_\_\_\_ County Public Hospital District No. \_\_\_\_\_."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.042. DISTRICT RULES. The board may adopt rules and bylaws the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.043. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) On the district's behalf, the board may hold, construct, condemn, purchase, acquire, lease, add to, maintain, operate, develop, regulate, sell, and convey land, property, a property right, equipment, a hospital facility, or a hospital system

to maintain a district hospital, building, structure, or other facility.

(b) The board may lease an existing hospital, equipment, or property used in connection with a district hospital and equipment at a rate the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.044. CONTRACTING AUTHORITY. (a) In performing its powers under this subchapter the board may contract with:

- (1) the federal government;
- (2) this state;
- (3) a municipality; and
- (4) another hospital district.

(b) The district may incur indebtedness or borrow money for district purposes on the credit of the district or secured by the revenues of a district hospital.

(c) The district may contract with another community, corporation, or individual for services provided by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.045. PURCHASING PROCEDURES. The district is subject to the County Purchasing Act (Subchapter C, Chapter 262, Local Government Code), and the board shall comply with the competitive bidding or proposal procedures prescribed by that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.046. EMINENT DOMAIN. (a) On a resolution by the board, the district may exercise the power of eminent domain for the acquisition of property necessary to carry out the powers and duties of the district, including preventing damage to district property, property rights, equipment, hospital facilities and systems, and property adjacent to district property.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, for the exercise of that power by a municipality.

(c) The district may not exercise the power of eminent domain against:

(1) a hospital, clinic, or sanatorium operated as a charitable, nonprofit establishment or operated by a religious organization; or

(2) a privately owned or operated hospital or clinic, whether or not incorporated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.047. GIFTS AND ENDOWMENTS. The board may accept bequests and contributions on behalf of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.048. AUTHORITY TO SUE AND BE SUED; DISTRICT LIABILITY. (a) The board may sue and be sued on behalf of the district.

(b) A suit against the district must be brought in the county in which the district is located.

(c) The district is not liable for negligence for an act of a district officer, agent, or employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.049. OTHER BOARD POWERS. The board may:

(1) promote health in the district;

(2) print and publish information; and

(3) do any other thing necessary to the performance of the board's duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.050. PROVISION OF HOSPITAL SERVICES. (a) The district shall provide adequate hospital services for the district. A person who resides in the district is entitled to receive those services at available district hospital facilities at a rate



determined by the board and in any manner the board considers expedient or necessary under existing conditions. The district may provide the services in hospitals located outside the district.

(b) The district may furnish hospital services to a person who does not reside in the district at a reasonable and fair rate the board considers proper, but the district shall give priority to a district resident in the provision of hospital services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. DISTRICT FINANCES**

Sec. 282.061. ANNUAL REPORT. (a) Not later than June 1 of each year, the board shall prepare and file with the commissioners court a full, detailed report of the condition of the district. The report must include:

(1) an estimate of the cost of maintenance, operation, and needed repairs for the succeeding year;

(2) an inventory of all funds and other property of the district; and

(3) a list of all legal demands, debts, and obligations against the district.

(b) The board shall verify the report.

(c) The commissioners court shall carefully investigate and consider the report before setting a tax rate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.062. TREASURER. (a) The county treasurer of the county in which the district is located serves as treasurer of the construction and maintenance fund and the interest and sinking fund of the district.

(b) All money to be credited to the construction and maintenance fund or the interest and sinking fund shall be paid to the treasurer.

(c) The treasurer may not pay money from the construction and maintenance fund or the interest and sinking fund unless the treasurer receives a warrant ordering the payment signed by the district board chairman or another district officer designated by the board.

(d) The treasurer shall open a construction and maintenance fund account and an interest and sinking fund account with the district and shall keep a record of all of the district's money received for the accounts and paid from the accounts. The treasurer may not pay money from the accounts except on a voucher signed by the chairman or two board members.

(e) The treasurer shall maintain a file of the payment orders from the accounts.

(f) As required by the board or the commissioners court, the treasurer shall give a correct accounting to the board or the commissioners court of all matters relating to the accounts.

(g) For services on behalf of the district, the treasurer is entitled to receive an amount equal to:

(1) one-fourth of one percent of all money received by the treasurer for the construction and maintenance fund or the interest and sinking fund; and

(2) one-eighth of one percent of all money received by the treasurer and paid out of the construction and maintenance fund or the interest and sinking fund of the district.

(h) The treasurer is not entitled to receive a commission under Subsection (g) on district money the treasurer receives from the preceding treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS. (a) The treasurer shall maintain a construction and maintenance fund and an interest and sinking fund for the district and shall place money in those funds as required by this chapter or as the board by resolution directs. All other money received by the district shall be placed in a fund or funds as provided by the board.

(b) The amount of taxes collected that is necessary to pay the principal of and interest on the bonds as they mature shall be credited to the interest and sinking fund. All money received by the district from the sale of bonds shall be credited to the construction and maintenance fund.

(c) The treasurer shall pay from the construction and maintenance fund or from a fund or funds designated by the board the

expenses, debts, and obligations of the district created after the filing of the original petition and incurred in the creation, operation, and maintenance of the district, other than the principal of and interest on bonds.

(d) The interest and sinking fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(e) The construction and maintenance fund and interest and sinking fund shall be held for the purposes for which they were created. If money is improperly paid from either fund, the commissioners court may require the county treasurer to transfer to the fund from the district account the amount necessary to restore that amount.

(f) District funds shall be deposited in the county depositories in the manner required by law for county depositories. Interest collected on those funds belongs to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.064. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding.

(c) The fiscal year may not be changed more than once in any 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

Sec. 282.065. ANNUAL AUDIT; OPEN RECORDS. (a) The board annually shall have an audit made of the financial condition of the district.

(b) The audit and other district records are open to inspection during regular business hours at the district's principal office.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

#### **SUBCHAPTER E. DISTRICT BONDS**

Sec. 282.071. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire or construct hospital buildings or land if the bonds are approved by a majority of the qualified voters at the election to create the district in accordance with Subchapter A.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.072. INTEREST, MATURITY, AND DENOMINATION. (a) District bonds mature not more than 30 years after their date and bear interest at a rate ordered by the commissioners court but not more than six percent annually.

(b) The bonds must provide the interest rate and the time, place, manner, and conditions of payment as ordered by the commissioners court.

(c) The bonds may be payable annually or semiannually.

(d) The bonds must be issued in denominations of not less than \$100 nor more than \$1,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.073. EXECUTION OF BONDS. The county judge shall sign the bonds, and the county clerk shall attest the signature and place the seal of the court on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.074. APPROVAL AND REGISTRATION OF BONDS. (a) Before the bonds are offered for sale, the district shall forward to the attorney general:

(1) a copy of the bonds to be issued;

(2) a certified copy of the court order imposing the tax to pay the interest on the bonds and provide a sinking fund;

(3) a statement of the total bonded indebtedness of the district, including the series of bonds proposed;

(4) the assessed value of property for the purpose of taxation as shown by the most recent official county assessment; and

(5) any other information that the attorney general requires.

(b) The attorney general shall:

(1) examine the bonds; and

(2) certify the bonds if the attorney general determines that the bonds are issued in conformity with the constitution and law and that they are valid and binding obligations of the district.

(c) When the bonds are approved by the attorney general, the comptroller shall register the bonds in a book kept for that purpose and maintain the certificate of approval for the bonds.

(d) On approval and registration under this section, the bonds are incontestable for any cause. The certificate of approval or a certified copy of the certificate is admissible evidence in a suit to enforce the collection of the bonds as prima facie proof of the validity of the bonds with attached coupons. In that suit, only forgery or fraud may be offered as a defense against the validity of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.075. BOND RECORD BOOK. (a) Before issuing the bonds, the commissioners court shall provide to the county clerk a well-bound book in which the clerk shall record all bonds issued, including the following information:

(1) the bond numbers, amount, rate of interest, and date of issue;

(2) the date when the bonds are due;

(3) the place where the bonds are payable;

(4) the amount received for each bond;

(5) the annual assessment made to pay bond interest and to provide a sinking fund to pay the bonds; and

(6) the payment made of each bond.

(b) The record book must be open for inspection at all times by a taxpayer of the district or a bondholder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.076. COMPENSATION OF COUNTY CLERK. For recording services provided to the district, the county clerk is entitled to

receive fees as provided by Chapter 118, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.077. BOND OF COUNTY JUDGE. (a) When the bonds are registered, the county judge shall execute a good and sufficient bond, approved by the board and payable to the board, for an amount not less than the amount of the bonds issued. The bond must be conditioned on the faithful performance of the judge's duties.

(b) If the bond is executed by a satisfactory surety, the district may pay from the district construction and maintenance fund a reasonable premium on the bond on receipt of an invoice for the premium. If the amount of the premium is disputed as unreasonable, a court of competent jurisdiction may determine whether or not the premium is reasonable.

(c) The board may charge the cost of the bond premium against the commission allowed the county judge on the sale of district bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.078. SALE OF THE BONDS. (a) When the bonds are registered, the county judge, under the direction of the commissioners court, shall advertise and sell the bonds on the best terms and for the best price possible, but for a price not less than the sum of the amounts of the par value and the accrued interest.

(b) The county judge shall give the money received from the sale of a bond to the county treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.079. DISPOSITION OF UNNEEDED BONDS. With the consent of the commissioners court made of record, bonds that are not required for the purpose for which they were voted may be sold and the proceeds may be used to maintain, preserve, and operate the district hospital and to pay district debts and other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.080. ADDITIONAL BOND ISSUE AND ELECTION. (a) The board shall certify to the commissioners court the necessity for an additional bond issue if:

(1) the proceeds of the original bond issue are insufficient to complete the construction, equipment, maintenance, or purchase of hospital buildings or land for the district; or

(2) the board decides to provide for additional construction, equipment, maintenance, or purchase of hospital buildings or land.

(b) The certification must state:

(1) the amount required;

(2) the purpose for the funds;

(3) the rate of interest of the proposed bonds; and

(4) the maturity date of the proposed bonds.

(c) When the commissioners court receives the certification, the commissioners court shall order an election on the issuance of the bonds to be held in the district on the first uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(d) The sum of the amount of any outstanding bonds and the amount of additional bonds issued under this section may not exceed one-fourth of the assessed value of the real property in the district, as shown by the most recent annual assessment made for county taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.081. CHANGE IN USE OF BOND PROCEEDS AFTER BOND ISSUANCE. (a) After the issuance of bonds, the board may change the use of the bond proceeds to include a change or improvement to the district hospital if the change or improvement will not increase the cost of the proposed project beyond the amount of the authorized bonds.

(b) The board may make the change in the use of the bond proceeds by:

(1) entering in the minutes of the board a notation of the change; and

(2) by giving notice of the change by publication of the notation and the page number of the board minutes on which the notation was entered.

(c) The publication must be in English and must run for two successive weeks in a newspaper of general circulation in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. TAXES TO PAY BONDS**

Sec. 282.101. TAXES TO PAY BONDS. (a) When the bonds have been approved by the voters at the election authorizing the levy of taxes, the commissioners court shall impose a property tax for the benefit of the district. The tax rate must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they become due.

(b) After investigation and consideration of the annual report in accordance with Section 282.061, the commissioners court shall impose and collect taxes annually on all taxable property in the district. The amount of tax revenue:

(1) must be sufficient to maintain, preserve, and operate the district hospital and to pay all legal district debts and other obligations; and

(2) may not exceed two-tenths of one percent of the annual total assessed valuation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.102. TAX ASSESSOR-COLLECTOR. (a) The county tax assessor-collector shall levy and collect taxes for the district.

(b) After receiving a petition of at least five percent of the qualified taxpaying voters of a created district, the commissioners court may order an election to determine whether the district should have a tax assessor and collector other than the county tax assessor-collector. The commissioners court may order the election after:

(1) the district is created; and

(2) giving notice in the manner as provided for the creation election.

(c) If the voters determine by a two-thirds vote that the



district should have a district tax assessor-collector, the board shall appoint a suitable person to serve in that position.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER G. CONVERSION OF DISTRICTS**

Sec. 282.121. **AUTHORITY TO CONVERT.** A district created in accordance with this chapter may be converted into a district operating under Article IX, Section 9, of the Texas Constitution.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.122. **CONVERSION HEARING AND ELECTION.** (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the district who vote at an election called and held for that purpose.

(b) The board by order may set a time and place to hold a hearing on the question of converting the district under this subchapter. The board shall set a date for the hearing that is after the 30th day after the date on which the board issues the order.

(c) If after the hearing the board finds that conversion of the district would be in the best interest of the district, the board may order an election on the question of converting the district.

(d) The election shall be held not later than the 60th day after the date on which the election is ordered. Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.123. **BALLOT PROPOSITION.** The ballot for the election shall be printed to permit voting for or against the proposition: "The conversion of the \_\_\_\_\_ County Public Hospital District No. \_\_\_\_\_ (name of district) from a district operating under Chapter 282, Health and Safety Code, to a district operating under Article IX, Section 9, of the Texas Constitution, and the levy of annual taxes for hospital purposes at a rate not to exceed \_\_\_\_\_ (insert amount not to exceed 75 cents) on each \$100 valuation of all taxable

property in the district."

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.124. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.125. RESPONSIBILITY OF COUNTY. On conversion of a district under this subchapter, the county in which the district is located shall convey or transfer to the district:

(1) money held by the county treasurer for the district under Subchapter D, including any money in the district's construction and maintenance fund or interest and sinking fund; and

(2) taxes levied by the county for the benefit of the district under Subchapter F.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.126. DISTRICT RESPONSIBILITIES. On conversion of the district under this subchapter, the district assumes any outstanding indebtedness incurred by the county under Subchapter E.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.127. EFFECT OF CONVERSION. (a) A district converted under this subchapter is governed by Article IX, Section 9, of the Texas Constitution and by Chapter 206, Acts of the 71st Legislature, Regular Session, 1989 (Article 4494q-1, Vernon's Texas Civil Statutes), as if it had been originally created under that section and that Act, except that the board shall continue to be elected as provided by this chapter.

(b) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations

assumed or incurred by the district.

(c) Notwithstanding any other provision of law, the board may impose taxes for the entire year in which the district is converted unless the county has imposed taxes for the benefit of the district for that year.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

**CHAPTER 283. OPTIONAL HOSPITAL DISTRICT LAW OF 1957**  
**SUBCHAPTER A. CREATION OF DISTRICT**

Sec. 283.001. SHORT TITLE. This Act may be cited as the Optional Hospital District Law of 1957.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.003. DISTRICT AUTHORIZATION. (a) A county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution may create a hospital district and provide for the establishment of a countywide hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) If the county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, the countywide hospital district may take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.004. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district will be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion or on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) When the commissioners court orders the election, the court shall determine, subject to Section 283.121(c)(2), a rate of property tax that produces the amount of tax revenue necessary:

(1) to operate and maintain the proposed district's hospital system; and

(2) to pay when due the principal of and interest on bonds assumed by the district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.005. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (b), the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district under the Optional Hospital District Law of 1957 and the levy of a tax not to exceed \_\_\_\_\_ cents (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district, and the assumption by the district of all outstanding bonds previously issued for

hospital purposes by \_\_\_\_\_ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 283.021. DISTRICT BOARD; OFFICERS. (a) The commissioners court of a county in which a district is created under this chapter serves as the district board of hospital managers.

(b) The county judge of the county in which the district is located serves as the district board chairman.

(c) The county clerk serves as the district board secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.022. COMPENSATION. A board member serves without compensation other than the compensation provided by law for a county judge or a commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.023. RECORD OF BOARD MEETING. The secretary shall keep a suitable record of each board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.024. ADMINISTRATOR; DUTIES. (a) The board shall appoint an administrator for the district. The person must be qualified by training and experience.

(b) The administrator holds an office for a term of not more than two years but is subject to removal by the board at any time.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than \$10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

- (1) perform duties required by the board;
- (2) supervise the work and activities of the district; and
- (3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.025. ASSISTANT ADMINISTRATOR. (a) If the administrator is absent or unable to perform any of the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's functions or duties, subject to limitations prescribed by board order.

(b) The assistant administrator and other employees shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.026. STAFF. (a) The board may hire doctors, technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract may not exceed two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.027. RETIREMENT PROGRAMS. The commissioners court may include district employees in:

- (1) an existing county employees' pension or retirement program; or
- (2) an employees' pension or retirement program established for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.028. SEAL. The commissioners court's seal is the district seal. The seal shall be used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **SUBCHAPTER C. GENERAL POWERS AND DUTIES**

Sec. 283.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning a hospital or hospital system located in the district, or the county and municipality jointly operating a hospital or hospital system located in the district, shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county or municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) the unspent proceeds of any bonds assumed by the district under Section 283.043; and

(2) all unspent joint or separate county or municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) As soon as practical after the declaration of the election results, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.042. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes without prejudice to the rights of third parties any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, or maintenance of hospital facilities before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.043. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) A county or municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of bonds assumed by the district or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the bonds may not be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.044. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that



collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems or for the payment of bonds issued for the systems shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.045. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. The district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.046. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.047. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.048. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES.

(a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(c) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.049. DISTRICT INSPECTIONS. (a) The district facilities may be inspected by a representative of the Texas Board of Health or any other state board authorized to supervise a hospital.

(b) A resident district officer shall:

- (1) admit an inspector into the district facilities; and
- (2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.050. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

- (1) pay in advance or give bond or other security for costs in the trial court;
- (2) give bond for the issuance of a temporary restraining order or a temporary injunction; or
- (3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.051. GIFTS AND ENDOWMENTS. (a) On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

(b) The board may contract with the state to receive a payment or grant provided by the state for the care or treatment of hospital patients or patients in district facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.052. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued.

(b) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district in all legal matters.

(c) The board may employ additional legal counsel when the board determines that additional counsel is advisable.

(d) The district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. MEDICAL TREATMENT AND CARE**

Sec. 283.071. ADMISSION CRITERIA AND PAYMENT; CRIMINAL PENALTY. (a) The board shall enter an order in district records defining "indigent or needy person" for the purpose of determining qualifications for admission to district hospital facilities.

(b) An order under Subsection (a) must detail the criteria for an emergency admission to district facilities without regard to indigency and for the length and basis of the stay at the facility.

(c) The board may require evidence of indigency that it considers appropriate, including an affidavit of inability to pay.

(d) The board may hire personnel necessary to determine the eligibility of an applicant for admission to district facilities and to process admissions.

(e) A person commits an offense if the person is able to pay for the person's hospital care at a district facility and makes a false statement for the purpose of obtaining admission to a district hospital facility. An offense under this subsection is a misdemeanor

and punishable by a fine not to exceed \$200.

(f) A person who violates Subsection (e) is also liable for the cost of the person's hospital care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. DISTRICT FINANCES**

Sec. 283.081. BUDGET. (a) The administrator shall prepare an annual budget.

(b) The budget and all budget revisions shall be approved by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.082. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the commissioners court, Texas Board of Health, and comptroller.

(b) The report must:

(1) contain a sworn statement of all money and choses in action received by the administrator and the disposition of the money and actions; and

(2) detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.083. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the county depository.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for two years and until its successor is selected and qualified.

(c) All income of the district shall be deposited in the district depository.

(d) The county clerk's signature is not required on warrants against district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. DISTRICT BONDS**

Sec. 283.101. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire, purchase, construct, equip, or enlarge the hospital or hospital system if:

(1) a tax may be imposed at a rate that:

(A) is sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds; and

(B) when added to the rates of other taxes imposed by the district, does not exceed the maximum tax rate of the district; and

(2) the bonds are authorized by majority vote of the qualified voters of the district voting at an election held for the purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.102. BOND ELECTION. (a) A bond election may be held at any time the commissioners court considers advisable, except that it may not be held within two years after the date of a previous election.

(b) The election must be:

(1) ordered and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide elections.

(c) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.262, eff. Sept. 1, 2001.

Sec. 283.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund outstanding bonded indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided for other bonds of the district except that an election to authorize their issuance is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged from the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged from those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds must be approved by the attorney general and registered by the comptroller subject to the same requirements for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the

same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER G. TAXES**

Sec. 283.121. TAX ASSESSMENT AND COLLECTION. (a) If the district has issued or assumed bonds payable from taxes, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation.

(b) The commissioners court may impose a tax for:

- (1) the entire year in which the district is created;
- (2) maintenance and operation of the district; and
- (3) improvements and additions to the hospital system.

(c) The total tax rate of the district may not exceed:

- (1) the rate authorized by the voters of the district; or
- (2) the constitutional tax rate limit.

(d) The tax revenue may be used:

(1) to create an interest and sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system; and

(3) to make improvements and additions to the hospital system, including the acquisition of necessary sites.

(e) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.122. ELECTION TO INCREASE TAX AMOUNT. (a) The tax rate approved in the creation of the district may be increased only if the increase is approved by a majority of the qualified voters of the district who vote in an election called and held for that purpose.

(b) The commissioners court may order an election to increase the allowable tax rate to be held on its own motion or on the presentation of a petition for an election signed by at least 100 qualified property taxpaying voters of the district.

(c) When the commissioners court orders the election, the court shall determine the amount of tax necessary for the proper

maintenance of the hospital district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.123. **BALLOT PROPOSITION FOR TAX INCREASE.** The ballot for a tax increase under this subchapter shall be printed to provide for voting for or against the proposition: "The increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the commissioners court in its order calling the election) on each \$100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER H. DISTRICT CONVERSION**

Sec. 283.131. **DISTRICT CONVERSION AUTHORITY.** A hospital district created in accordance with Chapter 281 may be converted into a district subject to this chapter, or a district created in accordance with this chapter may be converted into a district subject to Chapter 281.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.132. **CONVERSION ELECTION REQUIRED.** (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the county in which the district is located who vote at an election called and held for that purpose.

(b) The commissioners court shall order a conversion election not later than the 20th day after the date of presentation of a petition for conversion signed by at least five percent of the qualified property taxpaying voters of the county.

(c) If the election is on the question of conversion of a district created in accordance with Chapter 281, when the



commissioners court orders the election, the court shall determine the amount of tax necessary:

- (1) to operate and maintain the district's hospital system;
- (2) to make improvements and additions to the hospital system, including the acquisition of necessary sites; and
- (3) to pay when due the principal of and interest on district bonds assumed by the original district but excluding bonds issued by the original district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.133. BALLOT PROPOSITIONS. (a) The ballot for the election held to determine the question of conversion of a district created under this chapter shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 281, Health and Safety Code, and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district."

(b) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if no bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district."

(c) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional

Hospital District Law of 1957, and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.134. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.135. EFFECT OF CONVERSION. (a) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations assumed or incurred by the district.

(b) Any bonds voted by a district originally created under Chapter 281 which have not been issued on the date of the conversion election may not be issued.

(c) On conversion of a district from one operated under Chapter 281 to one operated under this chapter, the district may not impose a tax in excess of the amount determined by the commissioners court in the election order for any purposes other than to pay the principal of and interest on the unpaid bonds issued by the district before the date of conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.136. LIMITATION ON FURTHER ELECTIONS. (a) If the proposition fails to carry at the conversion election, the district may not hold another election on the proposition for two years after the date of the election.

(b) A district that has converted under this subchapter may

hold an election for reconversion after five years after the date of the conversion. The election for reconversion must be held in the same manner as provided in this subchapter for the conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 284. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICT BONDS**  
**SUBCHAPTER A. ISSUANCE OF REVENUE BONDS IN COUNTIES WITH POPULATION**  
**OF AT LEAST 200,000**

Sec. 284.001. AUTHORITY TO ISSUE; FORM OF BONDS. (a) The commissioners court of a county with a population of at least 200,000 in which a hospital district has been created in accordance with Article IX of the Texas Constitution may issue revenue bonds to provide funds to:

(1) acquire, construct, repair, renovate, improve, enlarge, and equip a hospital facility; and

(2) acquire any real or personal property on behalf of the district for those purposes.

(b) The commissioners court may not issue revenue bonds under this subchapter on behalf of a hospital district to purchase a nursing home for long-term care.

(c) The bonds and bond interest coupons are negotiable instruments.

(d) The bonds may be issued in the form, denomination, and manner and under the terms and conditions determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.002. TERMS. (a) The bonds must mature serially or otherwise not more than 40 years after the date they are issued.

(b) The bonds may be:

(1) made redeemable before maturity; and

(2) issued registrable as to principal or as to principal and interest.

(c) The bonds shall be executed in the manner and bear interest at the rate provided by the commissioners court in the order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.003. APPROVAL AND REGISTRATION OF BONDS. (a) The commissioners court shall submit the bonds and the proceedings authorizing their issuance to the attorney general for examination. If the attorney general finds that the bonds are authorized in accordance with law, the attorney general shall approve the bonds and the comptroller shall register the bonds.

(b) After approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.004. SECURITY. (a) The commissioners court may make bonds issued under this subchapter payable from and secured by a lien on or pledge of all or part of the hospital district revenue from operation or ownership of hospital facilities, except ad valorem taxes.

(b) The commissioners court may also secure the bonds by:

(1) a pledge of all or part of a grant, a donation, or other income received from a public or private source, whether in accordance with an agreement or otherwise; and

(2) a mortgage or deed of trust on real property on which a district hospital facility is or will be located and any real or personal property incident or appurtenant to that facility.

(c) The commissioners court may authorize the execution and delivery of a trust indenture, mortgage, deed of trust, or other form of encumbrance to evidence a security agreement under Subsection (b)(2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.005. SALE OF BONDS; USE OF PROCEEDS. (a) The bonds may be sold in the manner, at the price, and under the terms determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

(b) If permitted by the bond order, a required part of the proceeds from the bond sale may be used for:

(1) the payment of interest on the bonds during the construction of hospital facilities financed with bond proceeds;

(2) the payment of operation and maintenance expenses of those facilities to the extent and for the period specified by the bond order; and

(3) the creation of reserves for the payment of bond principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.006. INVESTMENT OF BOND PROCEEDS. Proceeds from the sale of bonds may be invested until needed to the extent and in the manner provided by the bond order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.007. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) a bank;

(2) a trust company;

(3) a savings and loan association;

(4) an insurance company;

(5) a small business investment corporation;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; or

(9) an interest or sinking fund or other public funds of the state or a municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.008. SECURITY FOR DEPOSITS. The bonds are eligible to secure deposits of public funds of the state or of a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their market value if accompanied by all appurtenant unmatured coupons, if any.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.009. AUTHORITY TO ISSUE SUBSEQUENT BONDS. In the authorization of bonds under Section 284.001, the commissioners court may provide for the subsequent issuance of additional parity, subordinate lien, or other bonds, under the terms or conditions stated in the order authorizing the issuance of the original bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.010. REFUNDING BONDS AND REFINANCING. (a) Revenue bonds issued by the commissioners court under this subchapter or under any other statute of this state and payable from hospital facility revenue may be refunded or otherwise refinanced by the commissioners court.

(b) The provisions of this subchapter pertinent and appropriate to the issuance of revenue bonds generally apply to the refunding bonds.

(c) In issuing refunding bonds or in refinancing revenue bonds, the commissioners court in the same authorizing proceedings may:

(1) refund or refinance bonds issued under this subchapter and bonds issued under another statute of this state and combine the refunding bonds with other new bonds to be issued under those laws into one or more issues or series of bonds; and

(2) provide for the subsequent issuance of additional parity, subordinate lien, or other bonds.

(d) Refunding bonds shall be issued and delivered under the terms and conditions stated in the authorizing proceedings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.011. TAXES TO PAY OPERATING AND MAINTENANCE EXPENSES.

(a) Ad valorem taxes of the hospital district shall be used to pay hospital facility operation and maintenance expenses to the extent that hospital facility revenue and income are not available at any time to pay all those expenses.

(b) The proceeds of an annual ad valorem tax may be pledged to pay hospital facility operation and maintenance expenses in the order

authorizing the issuance of bonds under this subchapter.

(c) During each year that any of the bonds are outstanding, the commissioners court shall compute and determine the rate and amount of ad valorem tax that is sufficient to raise and produce the funds required to pay required hospital facility operation and maintenance expenses if the annual ad valorem tax is pledged as security for the payment of those expenses. In determining the tax rate, the commissioners court may allow for tax delinquencies and the cost of tax collection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.012. AUTHORITY OF DISTRICT GOVERNING BODY IN ABSENCE OF AD VALOREM TAX. If a hospital district created under Article IX of the Texas Constitution does not have ad valorem taxes levied on behalf of the district by the commissioners court of the county in which the hospital district is located, the district board of directors or other governing body has all of the powers and duties otherwise provided to a commissioners court under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.013. ANNUAL BUDGET. (a) The commissioners court, board of hospital managers, or hospital district board of directors shall provide in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district.

(b) In preparing the budget, the commissioners court or board may consider the estimated revenue and income from hospital facilities that will be available for paying operation and maintenance expenses after providing for all principal, interest, and reserve requirements in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.014. AUTHORITY TO CHARGE FOR HOSPITAL SERVICES. (a) The commissioners court, board of hospital managers, or hospital district board of directors may fix and collect charges for the occupancy or use of hospital facilities and hospital services in the

amount and manner determined by the commissioners court or board.

(b) The charges shall be fixed and collected in an amount:

(1) sufficient, with other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds; and

(2) required by the bond order to provide for payment of all or part of the operation, maintenance, and other expenses of the hospital facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.015. USE OF OTHER LAW. A commissioners court may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any power expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. ISSUING AND REFUNDING REVENUE BONDS BY HOSPITAL DISTRICTS CREATED UNDER ARTICLE IX, SECTION 9, OF THE TEXAS CONSTITUTION**

Sec. 284.031. AUTHORITY TO ISSUE. (a) A hospital district created in accordance with Article IX, Section 9, of the Texas Constitution may issue revenue bonds to:

(1) acquire, construct, repair, renovate, or equip buildings and improvements for hospital purposes; and

(2) acquire sites for hospital purposes.

(b) The hospital district may refund revenue bonds previously issued for the purposes specified by Subsection (a).

(c) The bonds must be payable from and secured by a pledge of all or part of district revenues from operation of a hospital. The bonds may also be secured by a mortgage or deed of trust lien on all or part of the district's property.

(d) The bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



**SUBCHAPTER C. BOND ELECTIONS IN HOSPITAL DISTRICTS**

Sec. 284.041. BOND ELECTIONS FOR REVENUE BONDS. (a) The commissioners court of a county authorized by law to issue revenue bonds on behalf of a hospital district in the county may, on its own motion, order an advisory election to determine whether a majority of the qualified voters of the hospital district voting at the election favor the issuance of revenue bonds. The order must contain the same information contained in the notice of the election.

(b) In addition to the contents of the notice required by the Election Code, the notice must state any other matters that the commissioners court considers necessary or advisable.

(c) Subject to any additional notice requirements under Section 4.003, Election Code, the commissioners court shall publish notice of the election one time, at least 10 days before the date set for the election, in a newspaper of general circulation in the hospital district.

(d) The election is advisory only and does not affect the authority of the commissioners court to issue revenue bonds on behalf of the hospital district under an applicable law that does not require an election.

(e) The expenses of holding the election shall be paid from hospital district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 285. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICTS**  
**SUBCHAPTER A. PAYMENT OF HOSPITAL DISTRICT OPERATING EXPENSES IN**  
**CERTAIN POPULOUS COUNTIES**

Sec. 285.001. DEFINITION. In this subchapter, "bond" includes a note.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county having:

- (1) a population of at least 800,000; and
- (2) a countywide hospital district that:
  - (A) has taxes imposed and collected by the commissioners court of the county; and

(B) has teaching hospital facilities affiliated with a state-owned or private medical school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 73, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 37, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 37, eff. September 1, 2011.

Sec. 285.003. AUTHORITY TO MAKE REVENUE ANTICIPATION AGREEMENT.

(a) The commissioners court of the county may make a revenue anticipation agreement with a person, including a bank or other financial institution, on the determination by the commissioners court that the county hospital district's projected revenue, including tax collections, will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses.

(b) Under the revenue anticipation agreement, the contracting person agrees to advance to the hospital district, and the county and district agree to repay from the sources specified by Section 285.006, funds necessary for the district hospital facilities' operation and maintenance during the term of the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.004. TERMS. (a) Subject to this section, the parties to a revenue anticipation agreement determine its terms.

(b) The term of the revenue anticipation agreement may not exceed two years.

(c) An advance may not be made to a district under a revenue anticipation agreement more than once each month. The amount of an advance may not exceed the difference between (1) the district's accumulated, unpaid operating and maintenance expenses, and (2) the district's revenue and income, including tax revenue, actually received by the district to the date of the advance and lawfully available for paying those expenses, together with the operating reserves reasonably required for one month.

(d) The party making the advances may rely on a certification

made by the district's authorized officers concerning facts specified by Subsection (c).

(e) Amounts advanced under a revenue anticipation agreement may bear interest at a rate or rates not more than the legal rate for district revenue bonds, and the agreement may provide that the rate of interest on those amounts may be determined at the time the advance is made by reference to any determinative factors and formulae on which the parties agree.

(f) The agreement must provide:

(1) for the advanced amounts to mature and become due and payable on a date on or before the day the agreement ends; and

(2) that the advanced amounts may be paid without penalty at any time before maturity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.005. REFUNDING PROHIBITED; REPAYMENT REQUIRED. (a) An advance may not be refunded, refinanced, or extended.

(b) When district revenues are received, the commissioners court shall apply them to the payment or prepayment of outstanding, unpaid advances under the revenue anticipation agreement if:

(1) those revenues are not required or committed to pay other district obligations and expenses; and

(2) the revenues are received during the term of the revenue anticipation agreement.

(c) Until all advances under a revenue anticipation agreement are repaid, retired, and canceled, an advance may not be made under a subsequent revenue anticipation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.006. SECURITY; DEFAULT OF REPAYMENT. (a) An advance under a revenue anticipation agreement is secured by and payable from:

(1) a pledge of and lien on district revenue from the operation and maintenance of its hospital facilities; or

(2) tax revenues, when collected, imposed for the purpose of operating and maintaining the district's facilities for the year during which the advances are made.

(b) If the district fails to repay any advanced amount when due under an agreement or under this subchapter, an application for a writ of mandamus or other action may be filed in a district court to enforce the agreement and repayment as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.007. LIMITATION ON USE OF PROCEEDS; AUDIT. (a) An advance under a revenue anticipation agreement may be used only for the purposes authorized by this subchapter.

(b) It is not a defense to repayment of advanced amounts that the funds are used for a purpose not authorized by this subchapter.

(c) The auditor of the hospital district shall:

(1) audit the use of advanced funds at the time of the district's regular audit; and

(2) certify to the commissioners court whether those funds are used for proper operating and maintenance purposes authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.008. BONDS. (a) In a revenue anticipation agreement, the commissioners court may promise to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds evidencing the county's and hospital district's obligation to repay the advances as provided by the agreement and this subchapter.

(b) The bonds may be delivered on terms consistent with the terms specified for a revenue anticipation agreement by this subchapter.

(c) The provisions of this subchapter that relate to advances apply to bonds issued under this section.

(d) Bonds issued under this subchapter are:

(1) incontestable in a court or other forum;

(2) valid and binding obligations;

(3) investment securities under the Uniform Commercial Code (Title 1, Business & Commerce Code);

(4) legal and authorized security for public funds of the state and its political subdivisions; and

(5) legal and authorized investments by a bank, savings bank, savings and loan association, or insurance company.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.009. TAXES TO SECURE BONDS. (a) The commissioners court may pay and secure the principal of and interest on bonds issued under this subchapter with annual ad valorem taxes imposed by the hospital district as required by the bonds and any relevant revenue anticipation agreement if:

(1) the hospital district is created under Article IX, Section 4, of the Texas Constitution and the creation of the district is approved at an election held in the district as required by that constitutional provision; or

(2) the hospital district is created under another constitutional provision that permits the imposition and pledge of taxes.

(b) The commissioners court shall set the tax rate of the hospital district at a rate sufficient to pay the bond principal and interest when due if taxes are pledged in accordance with this section. In setting the tax rate, the commissioners court shall give consideration to the amount of money estimated to be received from revenues pledged under a revenue anticipation agreement that may be available for the payment of bond principal and interest as provided by the revenue anticipation agreement, making allowance for tax delinquencies and the cost of tax collection.

(c) The sum of all annual ad valorem taxes imposed by the hospital district may not exceed 75 cents on \$100 valuation of all taxable property in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. PARKING STATIONS NEAR HOSPITALS IN COUNTIES OF AT  
LEAST 1.5 MILLION**

Sec. 285.021. DEFINITIONS. In this subchapter:

(1) "Bond order" means the order authorizing the issuance of revenue bonds.

(2) "Parking station" means a lot, an area, or a surface or a subsurface structure for automotive vehicle parking. The term

includes the equipment used in connection with the maintenance and operation of the station and the site of the station.

(3) "Trust indenture" means the indenture pledging revenues to secure revenue bonds issued by a hospital district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.022. AUTHORITY TO CONSTRUCT, IMPROVE, OPERATE, AND LEASE PARKING STATION. (a) A hospital district located in a county with a population of more than 1.5 million may construct, enlarge, furnish, equip, operate, or lease a parking station near a hospital in the district on the determination by the commissioners court of the county that the action is in the best interest of the hospital district and the residents of the district.

(b) A lease under this section may be made to a person on terms considered appropriate by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 38, eff. September 1, 2011.

Sec. 285.023. AUTHORITY TO ISSUE REVENUE BONDS; SECURITY. (a) The commissioners court may issue revenue bonds on behalf of the hospital district to pay the costs to construct, enlarge, furnish, or equip the parking station.

(b) The bonds must be payable from and secured by a pledge of:

(1) the net revenues derived from the operation of the parking station; and

(2) other revenues resulting from the ownership of the parking station properties, including receipts from leasing all or part of the parking station.

(c) The bonds must be authorized by an order adopted by a majority vote of a quorum of the commissioners court on behalf of the hospital district. An election is not required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.024. FORM AND EXECUTION OF BONDS. The bonds must:

- (1) be negotiable;
- (2) be signed by the county judge;
- (3) be countersigned by the county clerk;
- (4) be registered by the county treasurer;
- (5) have the seal of the commissioners court impressed or printed on the bonds; and
- (6) contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.025. TERMS. (a) Bonds issued under this subchapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

- (1) be sold at a price and under terms that the commissioners court considers the most advantageous reasonably obtainable; and
- (2) be made callable before maturity at times and prices prescribed in the order authorizing the bonds.

(b) The bonds may not bear interest at a rate greater than that allowed by Chapter 1204, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.263, eff. Sept. 1, 2001.

Sec. 285.026. APPROVAL AND REGISTRATION OF BONDS. (a) The county must submit to the attorney general bonds issued under this subchapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this subchapter, are valid and binding obligations of the county, and are secured as recited in the bonds:

- (1) the attorney general shall approve the bonds; and
- (2) the comptroller shall register the bonds and certify the registration of the bonds.

(c) The bonds are incontestable after the comptroller certifies the registration of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.027. OTHER BONDS. (a) Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the bond order or the trust indenture.

(b) Parity bonds may be issued under conditions specified in the bond order or trust indenture.

(c) The county may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this subchapter.

(d) Refunding bonds issued under this section may be exchanged for previous bonds by the comptroller or may be sold. If the bonds are sold, the proceeds shall be applied to the payment of outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.028. USE OF PROCEEDS; INITIAL COSTS. An amount necessary for the payment of not more than two years' interest on the bonds and an amount estimated by the commissioners court to be required for operating expenses until the parking station becomes sufficiently operative may be set aside out of the proceeds from the sale of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.029. CHANGE FOR DISTRICT SERVICES. The hospital district shall charge sufficient rentals or rates for services rendered by the parking station to produce revenues sufficient to:

(1) pay all expenses of owning, operating, and maintaining the parking station;

(2) pay the principal of and interest on the bonds when due; and

(3) create and maintain a bond reserve fund and other funds as provided by the bond order or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 285.030. PROCEDURES FOR STATION OPERATION. The bond order or trust indenture may prescribe procedures for the operation of the parking station.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER C. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR IN HOSPITAL DISTRICTS CREATED UNDER CONSTITUTION**

Sec. 285.041. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR. A hospital district created under Article IX, Section 9, of the Texas Constitution may appoint a tax assessor and collector for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER D. SALE, LEASE, OR CLOSING OF HOSPITAL**

Sec. 285.051. AUTHORITY OF GOVERNING BODY. (a) The governing body of a hospital district by resolution may order the sale, lease, or closing of all or part of a hospital owned and operated by the hospital district, including real property. The resolution must include a finding by the governing body that the sale, lease, or closing is in the best interest of the residents of the hospital district.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 285.052.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.052. PETITION; ELECTION. (a) The governing body of the hospital district shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body orders the sale or closing, the governing body receives a petition requesting the election signed by at least 10 percent of the qualified voters of the hospital district. The number of qualified voters of the hospital district is determined according to the most recent official lists of registered voters.

(b) If a petition is filed under Subsection (a), the hospital may be sold or closed only if a majority of the qualified voters

voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER E. SALES AND USE TAX TO LOWER AD VALOREM TAXES**

Sec. 285.061. TAX AUTHORIZED; TAX RATES. (a) A hospital district that is authorized to impose ad valorem taxes may adopt a sales and use tax to lower the district's ad valorem taxes at an election held as provided by this subchapter. A district may change the rate of the sales and use tax or abolish the sales and use tax at an election held as provided by this subchapter. Subject to the limitations provided by Subsections (c) and (d), the district may impose the tax in increments of one-eighth of one percent, with a minimum tax of one-eighth of one percent and a maximum tax of two percent.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this subchapter. The comptroller may make rules for the collection and administration of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a sales and use tax, the comptroller may by rule provide for proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district, the election to adopt a sales and use tax or to increase the rate of the sales and

use tax in the district under this subchapter has no effect.

(e) to (h) Expired.

Added by Acts 1989, 71st Leg., 1st C.S., c. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 658, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 158, Sec. 1, eff. May 20, 1997; Acts 2001, 77th Leg., ch. 1290, Sec. 2, eff. Sept. 1, 2001.

Sec. 285.062. TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish the tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by the governing body of the district. The governing body shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the governing body to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent to be used to reduce the district property taxes."

(d) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 3, eff. Sept. 1, 2001.

Sec. 285.063. EFFECTIVE DATE OF TAX OR TAX CHANGE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter

occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) The provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.064. USE OF TAX REVENUE. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR**

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a hospital district that was created by general or special law.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 3, eff. Sept. 1, 2003.

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its

management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the hospital district for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991.  
Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.04, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 4, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. TERMS OF MEMBERS OF GOVERNING BOARD**

Sec. 285.081. TERMS. (a) The governing board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled and the members elected shall serve two-year terms. The subsequent election of board members previously scheduled to be held in an odd-numbered year shall be held as scheduled and the members elected shall serve three-year terms. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

(c) This section does not apply to a hospital district created under Chapter 281, Chapter 282, and Chapter 283.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 2, eff. June 16, 1991.

#### **SUBCHAPTER H. CONTRACTS, COLLABORATIONS, AND JOINT VENTURES**

Sec. 285.091. HOSPITAL DISTRICT CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. (a) A hospital district created under general or special law may, directly or through a nonprofit corporation created or formed by the district, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the district.

(b) A hospital district created under general or special law may contract with the Texas Department of Health for the provision of

health care services and assistance, including preventive health care services, to eligible residents of the district.

(c) A hospital district created under general or special law may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the hospital district participates.

Added by Acts 1995, 74th Leg., ch. 46, Sec. 1, eff. Aug. 28, 1995, and Acts 1995, 74th Leg., ch. 444, Sec. 3, eff. June 13, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1139, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 3, eff. June 16, 2007.

#### **SUBCHAPTER I. LONG-TERM CARE AND RELATED FACILITIES**

Sec. 285.101. FACILITIES OR SERVICES FOR ELDERLY OR DISABLED.

(a) This subchapter applies only to a hospital, hospital district, or authority created and operated under Article IX, Texas Constitution, under a special law, or under this title that is located in:

- (1) a county with a population of 35,000 or less;
- (2) those portions of extended municipalities that the federal census bureau has determined to be rural; or
- (3) an area that is not delineated as an urbanized area by the federal census bureau.

(b) A hospital, hospital district, or authority covered by this subchapter may:

(1) construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

- (A) a nursing home or similar long-term care facility;
- (B) elderly housing;
- (C) assisted living;
- (D) home health;
- (E) personal care;

- (F) special care;
- (G) continuing care; or
- (H) durable medical equipment;

(2) lease or enter into an operations or management agreement relating to all or part of a facility or service described in Subdivision (1) that is owned by the hospital district or authority;

(3) close, transfer, sell, or otherwise convey all or part of a facility and discontinue services; and

(4) issue revenue bonds and other notes to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(c) For the purpose of this section, a facility or service created under Subsection (b) is considered to be a hospital project under Chapter 223.

(d) This section does not authorize a hospital, hospital district, or authority to issue revenue bonds or other notes in accordance with this chapter to construct, acquire, own, enlarge, improve, furnish, or equip a facility or service listed in Subsection (b)(1) if a private provider of the facility or service is available and accessible in the service area of the hospital, hospital district, or authority.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 5, eff. June 16, 1995.

#### **SUBCHAPTER J. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS**

Sec. 285.131. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS.

(a) In a general or special election for board members of a hospital district created under general or special law, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

(d) A declaration of write-in candidacy must be filed not later

than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election.

(e) Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election for board members except to the extent of a conflict with this section.

(f) The secretary of state shall adopt rules necessary to implement this section.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1318, Sec. 51(3), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1343, Sec. 2, eff. June 20, 1997.  
Amended by Acts 2003, 78th Leg., ch. 925, Sec. 11, eff. Nov. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1109 (H.B. 2339), Sec. 34, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 46, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 51(3), eff. September 1, 2011.

#### **SUBCHAPTER K. DISSOLUTION OF HOSPITAL DISTRICT**

##### **Sec. 285.151. ASSETS TRANSFERRED ON DISSOLUTION.**

Notwithstanding any general or special law, if a hospital district is dissolved and the money or other assets of the district are transferred to a county or other governmental entity under a process established in accordance with Section 9, Article IX, Texas Constitution, the governmental entity shall use all transferred assets to:

(1) pay the outstanding debts and obligations of the district relating to the assets at the time of the transfer, if any; and

(2) furnish medical and hospital care for indigent persons who reside in the territory within the jurisdiction of the governmental entity.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 4.01, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. SALES AND USE TAX TO RAISE REVENUE FOR DISTRICTS IN**



**SMALL COUNTIES**

Sec. 285.161. TAX AUTHORIZED. (a) A majority of voters in a hospital district created under general or special law of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax to raise revenue if the imposition is authorized at an election under this subchapter.

(b) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption or increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.162. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) A district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.163. TAX ELECTION PROCEDURES. (a) An election is called by the adoption of a resolution by the governing body of the district. The governing body shall call an election if at least five percent of the number of registered voters in the district petition the governing body to call the election.

(b) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax to raise revenue in (name of district) at the rate of (proposed tax rate) percent."

(c) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax to raise revenue in (name of

district)."

(d) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax to raise revenue imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.164. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.165. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district;  
and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.  
Renumbered from Health & Safety Code Sec. 286.165 by Acts 2003, 78th  
Leg., ch. 1275, Sec. 2(93), eff. Sept. 1, 2003.

Sec. 285.166. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.167. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

#### **SUBCHAPTER M. REGULATION OF SERVICES**

Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the provision of nonemergency public health benefits. A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.70(a), eff. Sept. 1, 2003.

Sec. 285.202. USE OF TAX REVENUE FOR ABORTIONS; EXCEPTION FOR MEDICAL EMERGENCY. (a) In this section, "medical emergency" means:

(1) a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function; or

(2) the fetus has a severe fetal abnormality.

(a-1) In Subsection (a), a "severe fetal abnormality" means a life threatening physical condition that, in reasonable medical judgment, regardless of the provision of life saving medical treatment, is incompatible with life outside the womb.

(a-2) In Subsection (a-1), "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(b) Except in the case of a medical emergency, a hospital district created under general or special law that uses tax revenue of the district to finance the performance of an abortion may not receive state funding.

(c) A physician who performs an abortion in a medical emergency at a hospital or other health care facility owned or operated by a hospital district that receives state funds shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

(d) The statement required under Subsection (c)(1) shall be placed in the patient's medical records and shall be kept by the hospital or other health care facility where the abortion is performed until:

(1) the seventh anniversary of the date the abortion is performed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date the abortion is performed; or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 15.02, eff. September 28, 2011.

#### **SUBCHAPTER N. CHANGE IN RATE OF AD VALOREM TAXES**

Sec. 285.231. ELECTION TO INCREASE MAXIMUM TAX RATE. (a)

Registered voters of a hospital district that is authorized to impose ad valorem taxes and that has a maximum tax rate of less than 75 cents on the \$100 valuation of all taxable property in the district may file a petition with the secretary of the governing body of the hospital district requesting an election to authorize the increase of that maximum tax rate. The petition must be signed by at least the lesser of:

- (1) 100 of the registered voters of the district; or
- (2) the number equal to 15 percent of the registered voters of the district.

(b) The petition must state the maximum tax rate to be voted on at the election, which may not exceed 75 cents on the \$100 valuation of all taxable property in the district.

(c) The governing body of the hospital district by order shall set a time and place to hold a hearing on the petition to increase the maximum tax rate of the district. The governing body shall set a date for the hearing that is not earlier than the 10th day after the date the governing body issues the order.

(d) If after the hearing the governing body of the hospital district finds that the petition is in proper form and that an increase of the maximum tax rate would benefit the district, the governing body shall order an election to authorize the increase of the maximum tax rate to the tax rate stated in the petition. The order calling the election must state the:

- (1) nature of the election, including the proposition that is to appear on the ballot;
- (2) date of the election;
- (3) maximum tax rate to be voted on at the election;
- (4) hours during which the polls will be open; and
- (5) location of the polling places.

(e) The governing body of the hospital district shall give notice of the election by publishing a substantial copy of the

election order in a newspaper with general circulation in the district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

(f) The ballot for the election shall be printed to permit voting for or against the proposition: "The increase by the \_\_\_\_\_ (name of district) Hospital District of the maximum rate of annual taxes imposed for hospital purposes to a rate not to exceed \_\_\_\_\_ (insert the amount prescribed by the petition, not to exceed 75 cents) on each \$100 valuation of all taxable property in the district."

(g) After ordering an election under this subchapter, the governing body of the hospital district shall hold the election on the first authorized uniform election date prescribed by Section 41.001, Election Code, that allows sufficient time to comply with other requirements of law.

(h) If the majority of the votes cast in the district favor the proposition, the maximum tax rate of the district is increased to the tax rate stated in the petition.

Added by Acts 2003, 78th Leg., ch. 272, Sec. 1, eff. June 18, 2003. Renumbered from Health and Safety Code, Section 285.201 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(49), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1001 (S.B. 1972), Sec. 1, eff. September 1, 2007.

**SUBCHAPTER O. NONPROFIT CORPORATION CREATED OR FORMED BY  
DISTRICT**

Sec. 285.301. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) A hospital district created under general or special law may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of the district.

(b) The governing body of the hospital district shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The hospital district may contribute money to or solicit money for the nonprofit corporation. If the district contributes money to or solicits money for the corporation, the district shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

Sec. 285.302. COMPLIANCE BY NONPROFIT CORPORATION WITH CERTAIN LAWS. A nonprofit corporation created or formed under this subchapter or other law by a hospital district that is created under general or special law shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the hospital district that created or formed the corporation is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

#### **SUBCHAPTER Z. MISCELLANEOUS PROVISIONS**

Sec. 285.901. DISPOSITION OF SALVAGE AND SURPLUS PROPERTY. (a) In this section:

(1) "Salvage property" has the meaning assigned by Section 263.151, Local Government Code.

(2) "Surplus property" has the meaning assigned by Section 263.151, Local Government Code.

(b) The governing board of a hospital district may dispose of the hospital district's surplus or salvage property in the same way that a commissioners court of a county may dispose of the county's surplus or salvage property under Section 263.152, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 345, Sec. 2, eff. June 18, 2003.

### **CHAPTER 286. HOSPITAL DISTRICTS CREATED BY VOTER APPROVAL**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 286.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "District" means a hospital district created under this chapter.
- (3) "Director" means a member of the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.002. DISTRICT AUTHORIZATION. A hospital district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by Article IX, Section 9, of the Texas Constitution and by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

**SUBCHAPTER B. CREATION OF DISTRICT**

Sec. 286.021. PETITION FOR CREATION OF DISTRICT. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 registered voters of the territory of the proposed district.

(b) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 registered voters of the territory of the county in which the judge presides and of the proposed district.

(c) If there are fewer than 100 registered voters in any area for which a separate petition must be filed, the petition must be signed by a majority of the registered voters in the area.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.022. CONTENTS OF PETITION. (a) The petition prescribed by Section 286.021 must show:

- (1) that the district is to be created and is to operate under Article IX, Section 9, of the Texas Constitution;
- (2) the name of the proposed district;
- (3) the district's boundaries as designated by metes and



bounds or other sufficient legal description;

(4) that none of the territory in the district is included in another hospital district;

(5) the names of the temporary directors the commissioners court must appoint under Section 286.030 or a request that the commissioners court appoint temporary directors;

(6) whether the district is to impose a property tax and the maximum tax rate to be voted on at the creation election, which may not exceed 75 cents on the \$100 valuation of all taxable property in the district;

(7) whether the district is to impose a sales and use tax under Subchapter I and the maximum tax rate to be voted on at the creation election, which may not exceed the rate allowed under that subchapter;

(8) the method by which the permanent directors will be elected, as provided by Subsection (c); and

(9) the mailing address of each petitioner.

(b) The petition must provide for the appointment of the same number of temporary directors as there will be permanent directors.

(c) The petition may provide:

(1) the number of directors for the district, which number must be an odd number; and

(2) the method by which directors are to be elected, whether at large, by place, or both, so that a specific number of directors are elected from each commissioner precinct and a specific number are elected at large.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 5, eff. Sept. 1, 2001.

Sec. 286.023. FILING OF PETITION; HEARING; ORDERING ELECTION.

(a) If the petition is in proper form, the county judge shall receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall issue a notice of the hearing in accordance with Chapter 551, Government Code.

(d) At the time and place set for the hearing, the commissioners court shall consider the petition. The commissioners court shall grant the petition if the court finds that the petition is in proper form and contains the information required by Section 286.022. The commissioners court may grant a petition proposing creation of a hospital district that imposes a sales and use tax under Subchapter I only if all or a majority of the territory of the district is located in a county or counties each with a population of 75,000 or less.

(e) If a petition is granted, the commissioners court shall order an election to confirm the district's creation and to authorize the levy of a tax not to exceed the maximum tax rate prescribed by the petition.

(f) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(g) The election shall be held after the 45th day and on or before the 60th day after the date the election is ordered.

(h) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1290, Sec. 6, eff. Sept. 1, 2001.

Sec. 286.0235. BOND PROPOSITION AT ELECTION. (a) The petition prescribed by Section 286.021 may include a request that a proposition be submitted at the election to determine whether the board may issue general obligation bonds if the district is created. The petition must specify the maximum amount of bonds to be issued and their maximum maturity date.

(b) Even though the petition does not request submission of a proposition on whether the board may issue general obligation bonds, the commissioners court may, on the request of a petitioner, submit a proposition at the creation election on the issuance of bonds.

(c) The board may issue general obligation bonds as provided by Subchapter G if a majority of the votes cast in the election favor creation of the district and issuance of the bonds.

Added by Acts 1991, 72nd Leg., ch. 648, Sec. 1, eff. Aug. 26, 1991.

Sec. 286.024. ELECTION ORDER. The order calling the election must state:

- (1) the nature of the election, including the proposition that is to appear on the ballot;
- (2) the date of the election;
- (3) the hours during which the polls will be open; and
- (4) the location of the polling places.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.025. NOTICE. (a) The commissioners court shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district once a week for two consecutive weeks.

(b) The first publication must appear before the 35th day before the date set for the election.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.026. BALLOT PROPOSITION. (a) The ballot for an election proposing to create a hospital district that imposes a property tax shall be printed to permit voting for or against the proposition: "The creation of the \_\_\_\_\_ (name of district) Hospital District and the levy of annual property taxes for hospital purposes at a rate not to exceed \_\_\_\_\_ (insert the amount prescribed by the petition, not to exceed 75 cents) cents on each \$100 valuation of all taxable property in the district."

(b) The ballot for an election proposing to create a hospital district that imposes a sales and use tax under Subchapter I shall be printed to permit voting for or against the proposition: "The creation of the \_\_\_\_\_ (name of district) Hospital District and the levy of sales and use taxes for hospital purposes at a rate not

to exceed \_\_\_\_\_ (insert the amount prescribed by the petition, not to exceed the amount allowed under Subchapter I) percent."

(c) If a bond proposition is submitted to the voters, the ballot for the election shall contain the proposition prescribed by Subsection (a) or (b) followed by: " and the issuance of bonds in an amount not to exceed \_\_\_\_\_ (insert the amount prescribed by the petition or the commissioners court's order) and to mature not later than \_\_\_\_\_ (insert the date prescribed by the petition or the commissioners court's order)."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 2, eff. Aug. 26, 1991;  
Acts 2001, 77th Leg., ch. 1290, Sec. 7, eff. Sept. 1, 2001.

Sec. 286.027. ELECTION RESULT. (a) Except as provided in Subsections (b) and (c), a district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) If the proposed district contains territory in more than one county, a majority of the votes cast in each county must also favor creation of the district.

(c) If a majority of the votes cast in a county within the proposed district are against the creation of the district and a majority of the votes cast in the remaining county or counties favor creation of the district, the district may be created only in the counties voting in favor of the proposed district.

(d) If a majority of those voting at the election vote against creation of the district, another election on the question of creating the district may not be held before the first anniversary of the most recent election concerning the creation of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.028. COMMISSIONERS COURT ORDER. When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

"Whereas, at an election held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in that part of \_\_\_\_\_ County, State of Texas,

described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into a hospital district under state law; and

"Whereas, at the election \_\_\_\_\_ votes were cast in favor of formation of the district and \_\_\_\_\_ votes were cast against formation; and

"Whereas, the formation of the hospital district received the affirmative vote of the majority of the votes cast at the election as provided by law;

"Now, therefore, the Commissioners Court of \_\_\_\_\_ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into a hospital district (or a portion thereof) under the name of \_\_\_\_\_, under Article IX, Section 9, of the Texas Constitution, and has the powers vested by law in the district."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.029. OVERLAPPING DISTRICTS. (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 286.023 was most recently held.

(c) The fact that a district is created with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.030. TEMPORARY DIRECTORS. (a) On the date a commissioners court enters the order required by Section 286.028, the commissioners court shall also appoint the temporary directors of the district.

(b) If the petition prescribed by Section 286.021 specifically

names temporary directors, the commissioners court shall name those persons to serve as temporary directors of the district. If the petition requests that the commissioners court appoint the temporary directors, the court shall appoint the appropriate number of persons to serve as temporary directors of the district. If the petition fails to name or state the number of directors, there are five directors.

(c) If the district is located in more than one county, the commissioners courts shall each appoint a percentage of temporary directors equal to the ratio that the number of district residents in the county bears to the total number of district residents.

(d) From the time the district is created under Section 286.027 until the elected directors take office, the temporary directors serve as directors of the district.

(e) The commissioners court shall fill a vacancy in the office of temporary director by appointment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. DISTRICT ADMINISTRATION**

Sec. 286.041. BOARD OF DIRECTORS. The directors shall be elected in accordance with the petition prescribed by Section 286.021.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.042. DIRECTOR'S ELECTION. (a) The initial directors shall be elected at an election to be held on the first Saturday in May following the creation of the district.

(b) If the directors are elected at large:

(1) the appropriate number of candidates receiving the highest number of votes at the initial election of directors are directors for the district;

(2) the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of two years; and

(3) the remaining directors serve for a term of one year.

(c) If the directors are elected by place:

(1) the candidate for a place receiving the highest number

of votes for election to that place is a director for the district;

(2) a director elected to fill an even-numbered place at the initial election serves for a term of one year; and

(3) a director elected to fill an odd-numbered place at the initial election serves for a term of two years.

(d) If the directors are elected from commissioners precincts and at large:

(1) the number of candidates equal to the number of directors to be elected from each precinct who receive the highest number of votes from a commissioner precinct are directors for that precinct;

(2) the number of candidates equal to the number of directors to be elected at large who receive the highest number of votes from the district at large are directors for the district at large;

(3) a candidate elected from an odd-numbered precinct at the initial election serves for a term of two years;

(4) a candidate elected from an even-numbered precinct at the initial election serves for a term of one year;

(5) a candidate elected as the director from the district at large at the initial election serves for a term of two years; and

(6) if more than one director is elected at large, half of the directors elected serve two-year terms, and the other half serve one-year terms.

(e) After the initial election of directors, an election shall be held on the first Saturday in May each year to elect the appropriate number of successor directors for two-year terms.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.043. NOTICE OF ELECTION. Before the 35th day before the date of an election of directors, notice of the election shall be published one time in a newspaper with general circulation in the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.044. PETITION. (a) A person who wishes to have the person's name printed on the ballot as a candidate for director must

file an application with the secretary of the board.

(b) The application must be filed with the secretary not later than the 31st day before the date of the election.

(c) If directors are elected by place, the application must specify the place for which the applicant is to be a candidate.

(d) If the directors are elected from commissioners precincts and at large, the application must specify:

(1) the commissioner precinct the candidate wishes to represent; or

(2) that the candidate wishes to represent the district at large.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.045. QUALIFICATIONS FOR OFFICE. (a) To be eligible to be a candidate for or to serve as a director, a person must be:

(1) a resident of the district; and

(2) a qualified voter.

(b) In addition to the qualifications required by Subsection (a), if directors are elected from commissioners precincts, a person who is elected from a commissioner precinct or who is appointed to fill a vacancy for a commissioner precinct must be a resident of that commissioner precinct.

(c) An employee of the district may not serve as a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.046. BOND. (a) Before assuming the duties of the office, each director must execute a bond for \$5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.047. BOARD VACANCY. A vacancy in the office of



director shall be filled for the unexpired term by appointment by the remaining directors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.048. OFFICERS. (a) The board shall elect from among its members a president and a vice-president.

(b) The board shall appoint a secretary who need not be a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.049. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.050. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.051. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.052. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND

ATTORNEY. (a) The board may appoint qualified persons as administrator of the district, assistant administrator, and attorney for the district.

(b) The administrator, assistant administrator, and attorney serve at the will of the board.

(c) The administrator, assistant administrator, and attorney are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the hospital district in an amount not less than \$5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.053. APPOINTMENTS TO STAFF. The board may:

- (1) appoint to the staff any doctors the board considers necessary for the efficient operation of the district; and
- (2) make temporary appointments the board considers necessary.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.054. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.055. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

- (1) supervise the work and activities of the district; and
- (2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.056. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

- (1) establishing or administering a retirement program; or
- (2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 286.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county, municipality, or other governmental entity in which the district is located shall convey or transfer to the district:

- (1) title to land, buildings, improvements, and equipment related to the hospital system located wholly in the district that are owned by the county, municipality, or other governmental entity in which the district is located;
- (2) operating funds and reserves for operating expenses and funds that have been budgeted by the county, municipality, or other governmental entity in which the district is located to provide medical care for residents of the district for the remainder of the fiscal year in which the district is established;
- (3) taxes levied by the county, municipality, or other governmental entity in which the district is located for hospital purposes for residents of the district for the year in which the district is created; and
- (4) funds established for payment of indebtedness assumed by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.072. LIMITATION ON GOVERNMENTAL ENTITY. On or after creation of the district, a county, municipality, or other governmental entity in which the district is located may not levy taxes or issue bonds or other obligations for hospital purposes or

for providing medical care for the residents of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.073. DISTRICT RESPONSIBILITIES. (a) On creation of a district, the district:

(1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants;

(2) assumes any outstanding indebtedness incurred by a county, municipality, or other governmental entity in which all or part of the district is located in providing hospital care for residents of the territory of the district before the district's creation; and

(3) may operate or provide for the operation of a mobile emergency medical service.

(b) If part of a county, municipality, or other governmental entity is included in a district and part is not included in the district, the amount of indebtedness the district assumes under Subsection (a)(2) is that portion of the total outstanding indebtedness of the county, municipality, or other entity for hospital care for all residents of the county, municipality, or other entity that the value of taxable property in the district bears to the total value of taxable property in the county, municipality, or other entity according to the last preceding approved assessment rolls of the county, municipality, or other entity before the district is confirmed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.074. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital system and the funds and resources of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.075. DISTRICT RULES. The board may adopt rules governing the operation of the hospital and hospital system and the

duties, functions, and responsibilities of district staff and employees.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.076. METHODS AND PROCEDURES. The board may prescribe:

- (1) the method of making purchases and expenditures by and for the district; and
- (2) accounting and control procedures for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.077. HOSPITAL PROPERTY, FACILITIES, AND EQUIPMENT.

(a) The board shall determine:

- (1) the type, number, and location of buildings required to establish and maintain an adequate hospital system; and
- (2) the type of equipment necessary for hospital care.

(b) The board may:

- (1) acquire property, facilities, and equipment for the district for use in the hospital system;
- (2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;
- (3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease district hospital facilities; and
- (4) sell or otherwise dispose of district property, facilities, or equipment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.078. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than \$10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 286.079. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to hospital facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.080. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire a fee simple or other interest in property located in the territory of the district if the property interest is necessary to the exercise of the rights or authority conferred by this chapter.

(b) A district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by a district, the district is not required to:

- (1) pay in advance or give bond or other security for costs in the trial court;
- (2) give bond for the issuance of a temporary restraining order or a temporary injunction; or
- (3) give bond for costs or supersedeas on an appeal or writ of error.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.081. EXPENSES FOR MOVING FACILITIES OF RAILROADS OR UTILITIES. If, in exercising the power of eminent domain, the board requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and electric distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to

provide comparable replacement without enhancement of a facility, after deducting the net salvage value derived from the old facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.082. INDIGENT CARE. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance, as provided by Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) On finding that a patient or a relative of the patient legally responsible for the patient's support can pay for all or any part of the care and treatment provided by the district, the administrator shall report that finding to the board, and the board shall issue an order directing the patient or the relative to pay the district each week a specified amount that the individual is able to pay.

(e) The administrator may collect money owed to the district from the estate of a patient or from that of a relative who was legally responsible for the patient's support in the manner provided by law for collection of expenses in the last illness of a deceased person.

(f) If there is a dispute relating to an individual's ability to pay or if the administrator has any doubt concerning an individual's ability to pay, the board shall call witnesses, hear and resolve the question, and issue a final order. An appeal from a final order of the board must be made to a district court in the county in which the district is located, and the substantial evidence rule applies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.083. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district.

(c) The board may contract with the state or federal government for the state or federal government to reimburse the district for treatment of a sick, diseased, or injured person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.084. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

- (1) furnish a mobile emergency medical service; or
- (2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.085. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.086. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.



**SUBCHAPTER E. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT**

Sec. 286.101. EXPANSION OF DISTRICT TERRITORY. (a) Registered voters of a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 registered voters of the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The board shall set a date for the hearing that is after the 30th day after the date the board issues the order.

(c) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a modification or change is necessary or desirable.

(d) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(e) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the \_\_\_\_\_ Hospital District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the \_\_\_\_\_ Hospital District, if it is added to the district."

(f) The election shall be held after the 45th day and on or before the 60th day after the date the election is ordered. The election shall be ordered and notice of the election shall be given in the same manner as provided by Sections 286.024 and 286.025 for ordering and giving notice of an election authorizing creation of the district. Section 41.001(a), Election Code, does not apply to an election held under this section.

(g) If a district imposes a sales and use tax under Subchapter I, the territory added to the district must be located in a county or counties each with a population of 75,000 or less, and the addition of the territory may not result in a combined tax rate by the hospital district and other political subdivisions of this state of more than two percent at any location in the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 8, eff. Sept. 1, 2001.

Sec. 286.102. DISSOLUTION. (a) A district may be dissolved as provided by this section.

(b) The board may order an election on the question of dissolving the district and disposing of the district's assets and obligations. The board shall order an election if the board receives a petition requesting an election that is signed by a number of residents of the district equal to at least 15 percent of the registered voters in the district.

(c) The election shall be held not later than the 60th day after the date the election is ordered. Section 41.001(a), Election Code, does not apply to an election ordered under this section.

(d) The ballot for the election shall be printed to permit voting for or against the proposition: "The dissolution of the \_\_\_\_\_ Hospital District." The election shall be held in accordance with the applicable provisions of the Election Code.

(e) If a majority of the votes in the election favor dissolution, the board shall find that the district is dissolved. If a majority of the votes in the election do not favor dissolution, the board shall continue to administer the district, and another election on the question of dissolution may not be held before the first anniversary of the most recent election to dissolve the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.103. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If a majority of the votes in the election favor dissolution, the board shall:

(1) transfer the land, buildings, improvements, equipment,

and other assets that belong to the district to a county or another governmental entity in the district; or

(2) administer the property, assets, and debts in accordance with Section 286.104.

(b) If the district transfers the land, buildings, improvements, equipment, and other assets to a county or other governmental entity, the county or entity assumes all debts and obligations of the district at the time of the transfer, and the district is dissolved.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.104. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer the land, buildings, improvements, equipment, and other assets to a county or another governmental entity in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) After the board finds that the district is dissolved, the board shall determine the debt owed by the district and:

(1) if the district imposes a property tax, impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value; or

(2) if the district imposes a sales and use tax under Subchapter I, continue the tax until the debt is repaid.

(c) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of property taxes due the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 9, eff. Sept. 1, 2001.

Sec. 286.105. RETURN OF SURPLUS PROPERTY TAX MONEY. (a) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused property tax money to each district taxpayer.

(b) A taxpayer may request that the taxpayer's share of surplus

property tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 10, eff. Sept. 1, 2001.

Sec. 286.106. REPORT; DISSOLUTION ORDER. (a) After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 286.104 and 286.105, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district.

(b) Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER F. DISTRICT FINANCES**

Sec. 286.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.122. ANNUAL AUDIT. The board annually shall have an audit made of the financial condition of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated property tax rate that will be required, if the district imposes a property tax.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 11, eff. Sept. 1, 2001.

Sec. 286.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except as provided by Section 286.078(a) and by Sections 286.141, 286.144, and 286.145, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in:

- (1) bonds of the United States;
- (2) certificates of indebtedness issued by the United States secretary of the treasury;
- (3) bonds of this state or a county, municipality, or school district of this state; or
- (4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.101, eff. Sept. 1,

2001.

Sec. 286.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 286.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER G. BONDS**

Sec. 286.141. GENERAL OBLIGATION BONDS. The board may issue and sell bonds authorized by an election in the name and on the faith and credit of the hospital district to:

(1) purchase, construct, acquire, repair, or renovate buildings or improvements;

(2) equip buildings or improvements for hospital purposes;  
or

(3) acquire and operate a mobile emergency medical service.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.142. TAXES TO PAY BONDS. (a) At the time the bonds are issued by the district, the board shall levy a tax.

(b) The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) In any year, the tax together with any other tax the

district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.143. BOND ELECTION. (a) The district may issue general obligation bonds only if the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose under this section or under Subchapter B.

(b) The board may order a bond election. The order calling the election must state:

- (1) the nature and date of the election;
- (2) the hours during which the polls will be open;
- (3) the location of the polling places;
- (4) the amount of bonds to be authorized; and
- (5) the maximum maturity of the bonds.

(c) Notice of a bond election shall be given as provided by Section 1251.003, Government Code.

(d) The board shall canvass the returns and declare the results of the election.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 3, eff. Aug. 26, 1991;  
Acts 2001, 77th Leg., ch. 1420, Sec. 8.264, eff. Sept. 1, 2001.

Sec. 286.144. REVENUE BONDS. (a) The board may issue revenue bonds to:

- (1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for hospital purposes;
- (2) acquire sites to be used for hospital purposes; or
- (3) acquire and operate a mobile emergency medical service to assist the district in carrying out its hospital purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district's hospital system. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance



of revenue bonds by county hospital authorities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.145. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.265, eff. Sept. 1, 2001.

Sec. 286.146. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.147. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.148. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.149. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.150. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.151. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER H. PROPERTY TAXES**

Sec. 286.161. TAX AUTHORIZED. (a) A majority of voters in a district or proposed district may, at the creation election under Subchapter B or in conjunction with any other district election, authorize the district to impose a property tax.

(b) The board annually may impose property taxes in an amount not to exceed the limit approved by the voters at the election authorizing the levy of taxes.

(c) The tax rate for all purposes may not exceed 75 cents on each \$100 valuation of all taxable property in the district.

(d) The taxes may be used to pay:

(1) the indebtedness issued or assumed by the district;

and

(2) the maintenance and operating expenses of the district.

(e) The district may not impose taxes to pay the principal of or interest on revenue bonds issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 13, eff. Sept. 1, 2001.

Sec. 286.162. BOARD AUTHORITY. The board may impose taxes for the entire year in which the district is created.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.163. ADOPTING TAX RATE. In adopting the tax rate, the board shall consider the income of the district from sources other than taxation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.164. TAX ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

#### **SUBCHAPTER I. SALES AND USE TAXES FOR DISTRICTS IN SMALL COUNTIES**

Sec. 286.171. TAX AUTHORIZED. (a) A majority of voters in a proposed district of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax if the imposition is authorized at the creation election under Subchapter B.

(b) An election to authorize the imposition of a sales and use tax under this subchapter may be held only in conjunction with a creation election under Subchapter B.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.172. LIMITATION ON COMBINED TAX RATE; EFFECT ON ELECTIONS. An election to create a hospital district and to authorize the imposition of a sales and use tax under this subchapter, or an election to change the tax rate under Section 286.174, has no effect if as a result of the adoption of the sales and use tax or the change in the rate the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.173. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.174. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) Subject to Section 286.172, a district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.175. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district;  
and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.176. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.177. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

#### **SUBCHAPTER X. MISCELLANEOUS**

Sec. 286.951. LIMITATION ON STATE ASSISTANCE. The state may not become obligated for the support or maintenance of a hospital district created under this chapter, and the legislature may not make a direct appropriation for the construction, maintenance, or improvement of a facility of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.  
Renumbered from Sec. 286.181 by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

### **CHAPTER 287. HEALTH SERVICES DISTRICTS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 287.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of a district.
- (2) "District" means a health services district created under this chapter.
- (3) "Director" means a member of the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.002. DISTRICT AUTHORIZATION. A health services district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. CREATION OF DISTRICT**

Sec. 287.021. CREATION BY CONCURRENT ORDERS. (a) Except as provided by Subsection (b), a county or hospital district and one or more other counties or hospital districts may create a health services district by adopting concurrent orders.

(b) A county or portion of a county that is in the boundaries of a hospital district may not be a party to the creation of a health services district or to a contract with a health services district. The hospital district that serves the county or portion of the county may create and contract with the health services district for the boundaries of the hospital district.

(c) A concurrent order to create a health services district must:

- (1) be approved by the governing body of each creating county and hospital district;
- (2) contain identical provisions; and
- (3) define the boundaries of the district to be coextensive with the combined boundaries of each creating county and hospital district.

(d) A concurrent order to create a health services district adopted by a hospital district for which the tax rate is set by the commissioners court of the county in which the hospital district operates must be approved by the commissioners court of that county.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.022. CONTRACT TERMS. (a) A county or hospital district that creates a district under this chapter shall contract with the district to provide, at a minimum, the health care services the county or hospital district is required to provide by law or under the constitution. A contract with a county or hospital district that created the health services district under this chapter must:

- (1) state the term of the contract, not to exceed six years;
- (2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;
- (3) specify the financial contributions to be made by each party to the contract to fund the district, as described by Section 287.024; and
- (4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate.

(b) Chapter 791, Government Code, does not apply to a contract made under this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.023. PURPOSE AND DUTIES. (a) A health services district shall:

- (1) provide health care services to indigent residents of the district;
- (2) manage the funds contributed to the district by each county or hospital district that contracts with the district; and
- (3) plan and coordinate with public and private health care providers and entities for the long-term provision of health care services to residents of the district.

(b) A health services district may:

- (1) provide health care services on a sliding-fee scale to residents of the district who do not meet the basic income and resources requirements established under Sections 61.006 and 61.008 to be eligible for assistance under Chapter 61 but who are unable to



pay for the full cost of health care services; and

(2) assume responsibility for management and operation of the land, buildings, improvements, equipment, and other assets that are acquired by the district or for which the district agrees to assume responsibility under the terms of the contract.

(c) A health services district may not:

(1) establish, conduct, or maintain an institution as defined by Section 242.002; or

(2) establish or operate a personal care facility as defined by Section 247.002.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.024. FUNDING. (a) Each county or hospital district that contracts with the district shall contribute to the district for its operation:

(1) a specified dollar amount from or a percentage of the contracting entity's operating budget and reserves if the contracting entity is a hospital district;

(2) a specified percentage, not less than the percentage required under Section 61.037 for state assistance, of the contracting entity's general revenue levy for each state fiscal year for the term of the contract, if the contracting entity is a county;

(3) state assistance received under Chapter 61;

(4) federal matching funds received by a hospital district under the Medicaid disproportionate share program; and

(5) any funds that are:

(A) received under the Agreement Regarding Disposition of Settlement Proceeds dated July 18, 1998, or July 24, 1998, and filed in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Company, et al., No. 5-96CV-91; and

(B) received on or after the date on which the district is created and before the district is dissolved.

(b) The district shall maintain an accounting of the funds received from each county or hospital district that contracts with the district.

(c) The district may administer the financial contributions of all parties to the contract for district purposes.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. DISTRICT ADMINISTRATION**

Sec. 287.041. BOARD OF DIRECTORS. (a) A county or hospital district that creates the district and has a population of 125,000 or more shall appoint one director to the board for every 125,000 persons in the population of the county or hospital district, rounded to the nearest 125,000.

(b) A county or hospital district that creates the district and has a population of less than 125,000 may appoint one director to the board.

(c) The county judges of a county that creates the district shall appoint the directors to the board on behalf of the county. The board of directors of a hospital district that creates the district shall appoint the directors to the board on behalf of the hospital district.

(d) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(e) The number of directors appointed to the board by each county or hospital district that creates the district is determined at the time of the initial appointment of directors under this section and does not vary with subsequent variations in the population of the county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.042. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the county or hospital district that appoints the person under Section 287.041.

(b) An employee of the district may not serve as a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.043. BOND. (a) Before assuming the duties of the office, each director must execute a bond for \$5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the

district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.044. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.045. OFFICERS. (a) The board shall elect from among its members a president and a vice president.

(b) The board shall appoint a secretary, who need not be a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.046. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.047. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.048. VOTING REQUIREMENT. A majority of the members of

the board voting must concur in a matter relating to the business of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.049. ADMINISTRATOR AND ADDITIONAL STAFF. (a) The board may appoint qualified persons as administrator of the district and as additional administrative staff members as the board considers necessary for the efficient operation of the district.

(b) The administrator and other administrative staff members serve at the will of the board.

(c) The administrator and other administrative staff members are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the health services district in an amount not less than \$5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.050. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any doctors the board considers necessary for the efficient operation of the district; and

(2) make temporary appointments the board considers necessary.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.051. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.052. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

- (1) supervise the work and activities of the district; and
- (2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.053. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

- (1) establishing or administering a retirement program; or
- (2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 287.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county or hospital district that creates the district may transfer to the district:

- (1) management and operation of any land, buildings, improvements, and equipment related to the health care system located wholly in the district that are owned by the county or hospital district in which the district is located, as specified in the contract with the counties and hospital districts that created the district; and
- (2) operating funds and reserves for operating expenses and funds that have been budgeted by the county or hospital district in which the district is located to provide medical care for residents of the district, as specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.072. DISTRICT RESPONSIBILITIES. On creation of a

district, the district assumes the duties required under Section 287.023 and any additional duties specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.073. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the health care system and the funds and resources of the district that are transferred under Section 287.071.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.074. DISTRICT RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of district staff and employees.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.075. METHODS AND PROCEDURES. The board may prescribe:

- (1) the method of making purchases and expenditures by and for the district; and
- (2) accounting and control procedures for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.076. HEALTH CARE PROPERTY, FACILITIES, AND EQUIPMENT.

- (a) The board shall determine:
  - (1) the type, number, and location of buildings required to establish and maintain an adequate health care system; and
  - (2) the type of equipment necessary for health care.
- (b) The board may:
  - (1) acquire property, facilities, and equipment for the district for use in the health care system;
  - (2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;
  - (3) transfer by lease to physicians, individuals,

companies, corporations, or other legal entities or acquire by lease district health care facilities;

(4) sell or otherwise dispose of property, facilities, or equipment acquired by the district; and

(5) contract with a state agency or other qualified provider to provide services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.077. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than \$10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.078. DISTRICT CONTRACTS AND COLLABORATIONS. (a) The board may enter into operating or management contracts relating to health care facilities owned by the district or for which the district assumes responsibility for managing and operating under the terms of the contract with the counties and hospital districts that created the district.

(b) The board may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the district participates.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 1139, Sec. 3, eff. Sept. 1, 2003.

Sec. 287.079. PAYMENT FOR HEALTH CARE SERVICES. (a) The

district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance that complies with Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) The board may adopt a sliding-fee scale for health care services provided to a patient who can pay for some, but not all, of the care and treatment provided by the district.

(e) A county that created and contracted with the district may credit a district expenditure for the care and treatment of an eligible county resident to the same extent and in the same manner the county would be able to claim the expenditure under Chapter 61 if the county made the expenditure.

(f) The board shall adopt rules regarding the collection of money that is owed to the district for health care services provided to a patient who is determined to be able to pay for all or any part of the services from a patient, a patient's estate, or a relative who is legally responsible for the patient's support.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.080. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61.

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district, as determined in the same manner as the person's residence is determined under Chapter



61.

(c) The board may contract with a state or federal agency or political subdivision of the state to provide health care services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.081. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

- (1) furnish a mobile emergency medical service; or
- (2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.082. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.083. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. DISSOLUTION OF DISTRICT**

Sec. 287.101. DISSOLUTION. (a) A district shall be dissolved if:

(1) the contract with the counties and hospital districts that created the district expires and is not renewed; or

(2) the counties and hospital districts that created the district adopt concurrent orders to terminate the contract and dissolve the district and the concurrent orders:

(A) are approved by the governing bodies of each county and hospital district; and

(B) contain identical provisions.

(b) The governing body of a county or hospital district may adopt orders to terminate the contract with the district and end the county's or hospital district's participation in the district. The county or hospital district must give written notice to the district at least one fiscal year, as established by the board under Section 287.121, before terminating the contract and ending participation in the district. On termination of the contract with the district, the district shall transfer to the county or hospital district all unspent funds contributed by the county or hospital district to the district and the land, buildings, improvements, equipment, and other assets acquired by the district that are located in the county or hospital district. The termination of the contract by a county or hospital district does not affect the operation of the district with respect to each other county or hospital district that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.102. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If the district is dissolved, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets acquired by the district to the county or hospital district in which the property is located; or

(2) administer the property, assets, and debts in accordance with Section 287.103.

(b) If the district transfers its land, buildings, improvements, equipment, and other assets to a county or hospital district, the county or hospital district assumes all debts and obligations of the district related to the land, buildings, improvements, equipment, or assets at the time of the transfer, and the district is dissolved.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.103. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer its land,

buildings, improvements, equipment, and other assets to a county or hospital district in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering the property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

(c) If, after administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.104. ACCOUNTING. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 287.102 and 287.103, the board shall provide an accounting to each county and hospital district that created and contracted with the district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. DISTRICT FINANCES**

Sec. 287.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.122. ANNUAL AUDIT. (a) The board annually shall have an independent audit made of the financial condition of the district.

(b) A copy of the audit must be provided to:

- (1) each county and hospital district that created and contracted with the district;
- (2) each state and federal agency with which the district contracts; and
- (3) each other entity that contributes substantial funds to the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

- (1) the outstanding obligations of the district;
- (2) the amount of cash on hand to the credit of each fund of the district;
- (3) the amount of money received by the district from all sources during the previous year;
- (4) the amount of money available to the district from all sources during the ensuing year;
- (5) the amount of the balances expected at the end of the year in which the budget is being prepared; and
- (6) the estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the

10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the residents of the district demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except for construction contracts under Section 287.077(a) or as provided by Sections 287.142 and 287.143, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in:

- (1) bonds of the United States;
- (2) certificates of indebtedness issued by the United States secretary of the treasury;
- (3) bonds of this state or a county, municipality, or school district of this state; or
- (4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.102, eff. Sept. 1, 2001.

Sec. 287.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 287.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.131. AD VALOREM TAXATION. A district may not impose an ad valorem tax.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER G. BONDS**

Sec. 287.141. GENERAL OBLIGATION BONDS. A district may not issue general obligation bonds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.142. REVENUE BONDS. (a) The board may issue revenue bonds to:

- (1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for district purposes;
- (2) acquire sites to be used for district purposes; or
- (3) acquire and operate a mobile emergency medical service to assist the district in carrying out its purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

(d) Revenue derived from the operation of the district and pledged to the repayment of revenue bonds issued by the district must be used to repay the principal and interest owed on the bonds before being used to repay any other obligation of the district, including money owed to physicians who are employed by or who contract with the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.143. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the

refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.267, eff. Sept. 1, 2001.

Sec. 287.144. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.145. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.146. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.147. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized



investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.148. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.149. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

**For expiration of this chapter, see Section 288.0032(a).**

**CHAPTER 288. HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES  
LOCATED ON TEXAS-MEXICO BORDER  
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 288.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created under this chapter.

(3) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 2, eff. June 14, 2013.

Sec. 288.002. CREATION OF DISTRICT. A district may be created by order of the commissioners court of each county located on the Texas-Mexico border that has a population of:

(1) 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;

(2) 350,000 or more and is adjacent to a county described by Subdivision (1); or

(3) less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 3, eff. June 14, 2013.

Sec. 288.0031. DISSOLUTION. A district created under this chapter may be dissolved in the manner provided for the dissolution of a hospital district under Subchapter E, Chapter 286.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 4, eff. June 14, 2013.

Sec. 288.0032. EXPIRATION OF CHAPTER; DISTRIBUTION OF FUNDS ON EXPIRATION. (a) A district created under this chapter is abolished and this chapter expires on December 31, 2016.

(b) The commissioners court of a county in which a district is created shall refund to each paying hospital the proportionate share of any money remaining in the local provider participation fund created by the district under Section 288.155 at the time the district is abolished.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 4, eff. June 14, 2013.

Sec. 288.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 288.051. COMMISSION; DISTRICT GOVERNANCE. (a) Each district created under Section 288.002 is governed by a commission consisting of the commissioners court of the county in which the district is created.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

(c) Service on the commission by a county commissioner or county judge is an additional duty of that person's office.

(d) A district is a component of county government and is not a separate political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 6, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff.

June 14, 2013.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 288.101. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Each district may require a mandatory payment only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 7, eff. June 14, 2013.

Sec. 288.102. MAJORITY VOTE REQUIRED. (a) A district may not require any mandatory payment authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before requiring a mandatory payment under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 8, eff. June 14, 2013.

Sec. 288.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a mandatory payment authorized by this chapter.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 9, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff. June 14, 2013.

Sec. 288.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS**

Sec. 288.151. HEARING. (a) Each year, the commission of a district shall hold a public hearing on the amounts of any mandatory payments that the commission intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments required by the district under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 10, eff. June 14, 2013.

Sec. 288.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 288.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the district depository as provided by Section 288.203 and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 11, eff. June 14, 2013.

Sec. 288.155. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue from the mandatory payment required by this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund

may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the district;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of the money received by the district from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subdivision may not be used by the district, the county in which the district is located, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. [1623](#)), Sec. 12, eff. June 14, 2013.

Sec. 288.156. ALLOCATION OF CERTAIN FUNDS. Not later than the 15th day after the date the district receives a payment described by Section 288.155(c)(5), the district shall transfer to each paying hospital an amount equal to the proportionate share of those funds to which the hospital is entitled.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. [1623](#)), Sec. 12, eff. June 14, 2013.

**SUBCHAPTER E. MANDATORY PAYMENTS**

Sec. 288.201. MANDATORY PAYMENT BASED ON HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commission of a district may require an annual mandatory payment to be assessed quarterly on the net patient revenue of an institutional health care provider located in the district. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2010. The district shall update the amount of the mandatory payment on a biennial basis.

(b) The amount of a mandatory payment required under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment required under this section may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commission of a district shall set the amount of the mandatory payment required under this section. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the district, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c), the commission shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000.

(e) An institutional health care provider may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. [2463](#)), Sec. 1, eff. June 18, 2005.



Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 14, eff. June 14, 2013.

Sec. 288.202. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.

(a) Except as provided by Subsection (b), the county tax assessor-collector shall collect a mandatory payment required under this subchapter. The county tax assessor-collector shall charge and deduct from mandatory payments collected for the district a fee for collecting the mandatory payment in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of mandatory payments in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the mandatory payment shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 15, eff. June 14, 2013.

Sec. 288.203. DEPOSIT OF REVENUE FROM MANDATORY PAYMENTS.

Revenue from the mandatory payment required by this chapter shall be deposited in the district's local provider participation fund.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 16, eff. June 14, 2013.

Sec. 288.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest,

penalties, and discounts on mandatory payments required under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 17, eff. June 14, 2013.

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a mandatory payment required by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 18, eff. June 14, 2013.

**CHAPTER 289. COUNTY HEALTH CARE FUNDING DISTRICTS  
IN CERTAIN COUNTIES LOCATED ON TEXAS-MEXICO BORDER THAT  
HAVE POPULATION OF LESS THAN 300,000**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 289.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created by this chapter.

(3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.002. CREATION OF DISTRICT. A district is created in each county located on the Texas-Mexico border that has a population of less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 40, eff. September 1, 2011.

Sec. 289.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.

(b) Any money held by a district at the time the district is abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 289.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 289.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 289.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term that the person is appointed to fill;
- (3) have not been determined mentally incompetent by a final judgment of a court;
- (4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and
- (6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

Sec. 289.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION.

Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

- (1) maintained at the district office; and
- (2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

**SUBCHAPTER C. POWERS AND DUTIES**

Sec. 289.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 289.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district

taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 289.102 and 289.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases and expenditures by the district.

(b) The commission shall prescribe:

(1) all accounting and control procedures; and

(2) the method of purchasing necessary supplies, materials, and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS**

Sec. 289.151. BUDGET. (a) Each year, the commission shall prepare a budget for the following fiscal year that includes:

- (1) proposed expenditures and disbursements;
- (2) estimated receipts and collections; and
- (3) the rates and amounts of any taxes that the commission intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's



books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER E. TAXES**

Sec. 289.201. TAX ON OUTPATIENT SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all outpatient hospital visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of outpatient hospital visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update this tax basis with the number of outpatient hospital visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of outpatient hospital services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of outpatient hospital services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under this section. The rate may not exceed \$100 for each outpatient hospital visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or \$20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except as provided by Subsection (b), the county tax assessor-collector shall collect a tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.203. USE OF TAX REVENUE. Revenue generated by a

district from a tax imposed under this subchapter may be used only to:

- (1) provide the nonfederal share of a Medicaid supplemental payment program;
- (2) subsidize indigent programs; and
- (3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

**CHAPTER 290. COUNTY HEALTH CARE FUNDING DISTRICTS  
IN CERTAIN COUNTIES WITH POPULATION OF  
1.8 MILLION OR LESS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 290.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the commission of a district created under this chapter.
- (2) "District" means a county health care funding district created by this chapter.
- (3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.
- (4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.002. CREATION OF DISTRICT. A district is created in each county that has a population of 1.8 million or less and in which a municipality with a population of 1.1 million or more is predominantly located.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 42, eff. September 1, 2011.

Sec. 290.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.

(b) Any money held by a district at the time the district is abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any

remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

Sec. 290.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 290.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 290.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term that the person is appointed to fill;

(3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and

(6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION. Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

- (1) maintained at the district office; and
- (2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 290.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 290.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 290.102 and 290.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases and expenditures by the district.

(b) The commission shall prescribe:

- (1) all accounting and control procedures; and
- (2) the method of purchasing necessary supplies, materials,



and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS**

Sec. 290.151. BUDGET. (a) Each year, the commission shall prepare a budget for the following fiscal year that includes:

- (1) proposed expenditures and disbursements;
- (2) estimated receipts and collections; and
- (3) the rates and amounts of any taxes that the commission

intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

**SUBCHAPTER E. TAXES**

Sec. 290.201. TAX ON EMERGENCY ROOM SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all emergency room visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of emergency room visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update this tax basis with the number of emergency room visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of emergency room services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of emergency room services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under this section. The rate may not exceed \$100 for each emergency room visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or \$20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except as provided by Subsection (b), the county tax assessor-collector shall collect any tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount

determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.203. USE OF TAX REVENUE. Revenue generated by a district from a tax imposed under this subchapter may be used only to:

- (1) provide the nonfederal share of a Medicaid supplemental payment program;
- (2) subsidize indigent programs; and
- (3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter

causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

#### **SUBTITLE E. COOPERATIVE ASSOCIATIONS**

#### **CHAPTER 301. COOPERATIVE ASSOCIATIONS**

#### **SUBCHAPTER A. HOSPITAL LAUNDRY COOPERATIVE ASSOCIATIONS**

Sec. 301.001. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

- (A) a municipality;
- (B) a political subdivision of the state;
- (C) a state-supported health-related institution,

including:

- (i) The Texas A&M University System;
- (ii) The University of Texas System; and
- (iii) Texas Woman's University;
- (D) a nonprofit health-related institution; or
- (E) a cooperative association created under Subchapter B, a unit of which is located in a county with a population of more than 3.3 million.

(2) "Laundry system" includes:

- (A) buildings in which soiled or infected clothing,

uniforms, or linens are laundered;

(B) land and interests in land as sites for buildings or access to buildings;

(C) equipment and appliances for a laundry operation;

(D) supplies for a laundry operation;

(E) clothing, uniforms, and linens;

(F) automotive and other personal property appropriate for delivery and pickup services; and

(G) other property and equipment incidental or appropriate to the operation of laundry facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 74, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 43, eff. September 1, 2011.

Sec. 301.002. CREATION OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a hospital laundry cooperative association to establish, operate, and maintain a laundry system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Hospital Laundry Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.003. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a hospital laundry cooperative association may file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.004. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a hospital laundry cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.005. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a hospital laundry cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.006. MEMBERSHIP NOT REQUIRED. A component institution

of a state-supported institution is not required to be a member of a hospital laundry cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.007. POWERS OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. A hospital laundry cooperative association may:

(1) acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a laundry system and may own, hold, improve, develop, and manage land and interests in land acquired;

(3) construct, improve, enlarge, and equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing and fabrics, and the transportation and distribution of those articles;

(6) encumber and dispose of any personal property owned or held by the association;

(7) acquire by purchase or other method uniforms, clothing, or linen for its members;

(8) borrow or raise money without limit as to amount;

(9) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(10) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on,



creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.008. COST OF SERVICES. A hospital laundry cooperative association may determine the amount to be charged for providing laundry services through its laundry system to eligible institutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.009. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A hospital laundry cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a laundry system.

(b) The association shall pay bonds, notes, or other obligations of the association solely from revenue received from the operation of a laundry system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.010. BONDS AS INVESTMENTS. Bonds issued by a hospital laundry cooperative association under this subchapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings and loan association;

(3) an insurance company;  
(4) a fiduciary;  
(5) a trustee; and  
(6) a sinking fund of a municipality, county, school district, or other political subdivision or corporation of the state or other public fund of the state or a state agency, including the permanent school fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.011. BONDS AS SECURITY FOR DEPOSITS. A hospital laundry cooperative association's bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision or corporation of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.012. LIABILITY TO CREDITORS. Except as provided by this subchapter, a member of a hospital laundry cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.013. TAX EXEMPTION. (a) A hospital laundry cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.014. ANNUAL REPORT. A hospital laundry cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.015. SURPLUS REVENUE. The directors of a hospital laundry cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from the laundry system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.016. LOANS TO MEMBERS PROHIBITED. A hospital laundry cooperative association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. MISCELLANEOUS COOPERATIVE ASSOCIATIONS**

Sec. 301.031. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:

(i) The Texas A&M University System;

(ii) The University of Texas System;

(iii) Texas Woman's University; and

(iv) the Children's Nutrition Research Center;

(D) a nonprofit health-related institution; and

(E) a cooperative association created to provide a system, a unit of which is located in a county that has a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located, or in a county contiguous to a county having those characteristics.

(2) "System" includes all property and facilities, including buildings and land and interests in land, necessary, incidental, or appropriate to provide the following services for the benefit of members of a cooperative association:

(A) laundering services;

(B) central heating and cooling services, including steam and chilled water supply;

(C) communication services, including broadcast and other electronic communications, cable television, and transmission of X-rays, records, and documents;

(D) facilities and services for parking and traffic control, including the installation of appropriate traffic control devices on private streets;

(E) preparation, processing, delivery, and service of food, including food necessary for special diets;

(F) central administrative, financial, billing, conference, and educational services;

(G) child care services for the children of employees, consultants, students, and volunteers of cooperative association members, and temporary child care services for the children of patients and customers of those members;

(H) waste removal and disposal services of all types, including incineration and the removal, disposal, and abatement of hazardous wastes, including asbestos, lead, and other toxic substances;

(I) generation, cogeneration, purchase, sale, and pooling of energy in any form to the extent reasonably necessary to support the activities of a cooperative association;

(J) production and publication of educational or research materials;

(K) storage and warehousing services;

(L) transportation services;

(M) police and security services; and

(N) housing for employees, consultants, students,

volunteers, and patients of members of the cooperative association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.05(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 75, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 38, eff. Sept. 1, 2001.

Sec. 301.032. CREATION OF COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a cooperative association to establish, operate, and maintain a system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.033. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a cooperative association may prepare and file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.034. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.035. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership, if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.036. MEMBERSHIP NOT REQUIRED. A component institution of an institution that is supported by the federal or state government or a department, division, or agency of the federal government is not required to be a member of a cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.037. POWERS OF COOPERATIVE ASSOCIATION. To carry out the purposes of this subchapter, a cooperative association may:

(1) acquire, own, and operate a system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a system and may own, hold, improve, develop, and manage any land and interests in land acquired;

(3) construct, improve, enlarge, or equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a system;

(6) borrow or raise money;

(7) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(8) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.038. PROVISION OF SERVICES; COSTS. (a) A cooperative association may provide services from a system to eligible institutions and may determine the amount to be charged for providing the services.

(b) Notwithstanding Sections 301.032 and 301.037, a cooperative association may provide from a system central heating and cooling services, including steam and heated and chilled water supply, to persons other than eligible institutions and may determine the amount to be charged for providing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 10, eff. September 1, 2007.

Sec. 301.039. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a system.

(b) The association shall pay the bonds, notes, or other obligations of the association solely from revenue received from the operation of a system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.040. BONDS AS INVESTMENTS. Bonds issued by a cooperative association under this subchapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings and loan association;
- (3) an insurance company;
- (4) a fiduciary; and
- (5) a trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.041. LIABILITY TO CREDITORS. (a) Except as provided by this subchapter, a member of a cooperative association is not liable to the association or its creditors in excess of the amount



contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

(b) This subchapter does not authorize a state-supported health-related institution to make a financial commitment beyond the current budget period for the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.042. TAX EXEMPTION. (a) A cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.043. ANNUAL REPORT. A cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.044. SURPLUS REVENUE. The directors of a cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from a system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.045. LOANS TO MEMBERS PROHIBITED. A cooperative

association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.046. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.047. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not prevent a cooperative association from:

(1) creating recourse or nonrecourse debt in the form of bonds, debentures, notes, or any other form of obligation;

(2) encumbering, mortgaging, pledging, or granting a security interest in any property of the cooperative association;

(3) refunding existing debt or obligations by any means available under this subchapter; or

(4) otherwise exercising all express or implied powers granted by Section 301.033(b), 301.037, 301.038, 301.039, or 301.044, or granted by state corporation laws.

(b) This section only clarifies the powers of cooperative associations and does not expand their powers.

Added by Acts 1993, 73rd Leg., ch. 902, Sec. 1, eff. June 19, 1993.

**SUBTITLE F. POWERS AND DUTIES OF HOSPITALS**  
**CHAPTER 311. POWERS AND DUTIES OF HOSPITALS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 311.001. SPECIAL HOSPITAL REQUIREMENTS FOR GRADUATE OF FOREIGN MEDICAL SCHOOL PROHIBITED. (a) A hospital may not, as a condition to beginning a hospital internship or residency, require a United States citizen who resides in this state and who holds a diploma from a medical school outside the United States that is listed in the World Directory of Medical Schools published by the World Health Organization to:

(1) take an examination other than an examination required by the Texas State Board of Medical Examiners to be taken by a graduate of a medical school in the United States before allowing

that graduate to begin an internship or residency;

(2) complete a period of internship or graduate clinical training; or

(3) be certified by the Educational Council for Foreign Medical Graduates.

(b) This section applies only to a hospital that:

(1) is licensed by this state;

(2) is operated by this state or a political subdivision of this state; or

(3) receives direct or indirect state financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.002. ITEMIZED STATEMENT OF BILLED SERVICES. (a) Each hospital shall develop, implement, and enforce a written policy for the billing of hospital services and supplies. The policy must include:

(1) a periodic review of the itemized statements required by Subsection (b); and

(2) a procedure for handling complaints relating to billed services.

(b) Not later than the 30th business day after the date of the hospital discharge of a person who receives hospital services, the hospital shall provide on request an itemized statement of the billed services provided to the person. The itemized statement must:

(1) be printed in a conspicuous manner;

(2) list the date services and supplies were provided;

(3) state whether:

(A) a claim has been submitted to a third party payor;

and

(B) a third party payor has paid the claim;

(4) if payment is not required, state that payment is not required:

(A) in a typeface that is bold-faced, capitalized, underlined, or otherwise set out from surrounding written material; or

(B) by other reasonable means so as to be conspicuous that payment is not required; and

(5) contain the telephone number of the facility to call

for an explanation of acronyms, abbreviations, and numbers used to describe the services provided or supplies used or any other questions regarding the bill.

(c) Before a person is discharged from a hospital, the hospital shall inform the person of the availability of the statement.

(d) To be entitled to receive a statement, a person must request the statement not later than one year after the date on which the person is discharged from the hospital. The hospital shall provide the statement to the person not later than the 30th day after the date on which the person requests the statement.

(e) A hospital shall provide an itemized statement of billed services to a third party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third party payor must request the statement from the hospital and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The hospital shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third party payor receives a claim for payment of part but not all of the billed services, the third party payor may request an itemized statement of only the billed services for which payment is claimed or to which any deduction or copayment applies.

(f) If a person, including a third party payor, requests more than two copies of the statement, the hospital may charge a reasonable fee for the third and subsequent copies provided to that person. The fee may not exceed the hospital's cost to copy, process, and deliver the copy to the person.

(g) The Texas Department of Health or other appropriate licensing agency may enforce this section by assessing an administrative penalty, obtaining an injunction, or providing any other appropriate remedy, including suspending, revoking, or refusing to renew a hospital's license.

(h) In this section, "hospital" includes:

- (1) a treatment facility licensed under Chapter 464; and
- (2) a mental health facility licensed under Chapter 577.

(i) This section does not apply to a hospital maintained or operated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 2.01, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 5, eff. September 1, 2007.

Sec. 311.0025. AUDITS OF BILLING. (a) A hospital, treatment facility, mental health facility, or health care professional may not submit to a patient or a third party payor a bill for a treatment that the hospital, facility, or professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.

(b) If the appropriate licensing agency receives a complaint alleging a violation of Subsection (a), the agency may audit the billings and patient records of the hospital, treatment facility, mental health facility, or health care professional.

(c) A hospital, treatment facility, mental health facility, or health care professional that violates Subsection (a) is subject to disciplinary action, including denial, revocation, suspension, or nonrenewal of the license of the hospital, facility, or professional. Disciplinary action taken under this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(d) In this section:

(1) "Health care professional" means an individual licensed, certified, or regulated by a health care regulatory agency who is eligible for reimbursement for treatment ordered or rendered by that professional.

(2) "Hospital" means a hospital licensed under Chapter 241.

(3) "Mental health facility" means a mental health facility licensed under Chapter 577.

(4) "Treatment facility" means a treatment facility licensed under Chapter 464.

(e) A licensing agency may not take disciplinary action against a hospital, treatment facility, mental health facility, or health care professional for unknowing and isolated billing errors.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 2.02, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1271, Sec. 1, eff. Sept.

1, 1999.

Sec. 311.003. REIMBURSEMENT FOR INFANT TRANSPORT TO HOSPITAL NEONATAL INTENSIVE CARE UNIT. (a) A hospital that agrees to admit an infant into its level III neonatal intensive care unit shall pay for the part of the cost of transporting the infant to the hospital from any location in this state that the hospital administrator determines cannot be paid:

(1) by a member of the infant's immediate family or other person legally responsible for the infant's support through personal means; or

(2) by insurance or another benefit system that pays for transportation for that purpose.

(b) A hospital is entitled to receive state reimbursement for funds spent by the hospital under Subsection (a).

(c) The Texas Department of Health shall administer the state funds for reimbursement under this section, and may spend not more than \$100,000 each fiscal year from earned federal funds or private donations to implement this section.

(d) The Texas Board of Health shall adopt rules that establish qualifications for reimbursement and provide procedures for applying for reimbursement.

(e) In this section, "level III neonatal intensive care unit" means a neonatal care unit that complies with standards adopted by the American Academy of Pediatrics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION SYSTEM.

(a) In this section:

(1) "Department" means the Department of State Health Services.

(2) "Hospital" means a general or special hospital as defined by Section 241.003. The term includes a hospital maintained or operated by this state.

(b) The department shall coordinate with hospitals to develop a statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified

through the use of a system that communicates to hospital personnel the existence of that risk. The executive commissioner of the Health and Human Services Commission shall appoint an ad hoc committee of hospital representatives to assist the department in developing the statewide system.

(c) The department shall require each hospital to implement and enforce the statewide standardized patient risk identification system developed under Subsection (b) unless the department authorizes an exemption for the reason stated in Subsection (d).

(d) The department may exempt from the statewide standardized patient risk identification system a hospital that seeks to adopt another patient risk identification methodology supported by evidence-based protocols for the practice of medicine.

(e) The department shall modify the statewide standardized patient risk identification system in accordance with evidence-based medicine as necessary.

(f) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 5.01, eff. September 28, 2011.

#### **SUBCHAPTER B. EMERGENCY SERVICES**

Sec. 311.021. DEFINITION. In this subchapter, "emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately to:

- (1) sustain a person's life;
- (2) prevent serious permanent disfigurement or loss or impairment of the function of a body part or organ; or
- (3) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.022. DISCRIMINATION PROHIBITED IN DENIAL OF SERVICES; CRIMINAL PENALTIES. (a) An officer, employee, or medical staff member of a general hospital may not deny emergency services because

a person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry if:

- (1) the services are available at the hospital; and
- (2) the person is diagnosed by a licensed physician as

requiring those services.

(b) An officer or employee of a general hospital may not deny a person in need of emergency services access to diagnosis by a licensed physician on the hospital staff because the person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry.

(c) In addition, the person needing emergency services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(d) An officer, employee, or medical staff member of a general hospital commits an offense if that person recklessly violates this section. An offense under this subsection is a Class B misdemeanor, except that if the offense results in permanent injury, permanent disability, or death, the offense is a Class A misdemeanor.

(e) An officer, employee, or medical staff member of a general hospital commits an offense if that person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor, except that if, as a direct result of the offense, a person denied emergency services dies, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.023. NO LIABILITY FOR FAILURE TO PROVIDE EMERGENCY SERVICES AFTER GOOD FAITH EFFORT. An employee of a general hospital that does not have physician services available at the time of an emergency is not in violation of Section 311.022 if, after a reasonable good faith effort, a physician fails to provide or delegate the provision of medical services as required by state statutes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.024. PAYMENT FOR SERVICES REQUIRED. This subchapter



does not relieve a person of that person's obligation to pay for services provided by a hospital if the person can pay for those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **SUBCHAPTER C. HOSPITAL DATA REPORTING AND COLLECTION SYSTEM**

Sec. 311.031. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Health.

(2) "Charity care" means the unreimbursed cost to a hospital of:

(A) providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as "financially indigent" or "medically indigent"; and/or

(B) providing, funding, or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(3) "Contractual allowances" means the difference between revenue at established rates and amounts realizable from third-party payors under contractual agreements.

(4) "Department" means the Texas Department of Health.

(5) "Donations" means the unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(6) "Education-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) provision of scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs; and

(D) community health education through informational programs, publications, and outreach activities in response to community needs.

(7) "Financially indigent" means an uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(8) "Government-sponsored indigent health care" means the unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(9) "Health care organization" means a nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(10) "Hospital" means:

(A) a general or special hospital licensed under Chapter 241;

(B) a private mental hospital licensed under Chapter 577; and

(C) a treatment facility licensed under Chapter 464.

(11) "Hospital eligibility system" means the financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under Section 61.023 or higher, in the case of the financially indigent, than 200 percent of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(12) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(13) "Medically indigent" means a person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(14) "Research-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially

supporting facilities, equipment, and personnel for medical and clinical research conducted in response to community needs.

(15) "Subsidized health services" means those services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services may include but are not limited to:

- (A) emergency and trauma care;
- (B) neonatal intensive care;
- (C) free-standing community clinics; and
- (D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs.

(16) "Unreimbursed costs" means the costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. Prior to January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining unreimbursed costs. After January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 360, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 6.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.032. DEPARTMENT ADMINISTRATION OF HOSPITAL REPORTING AND COLLECTION SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial and utilization data.

(b) The board shall adopt necessary rules consistent with this subchapter to govern the reporting and collection of data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 726, Sec. 2, eff. Sept. 1, 1995.

Sec. 311.033. FINANCIAL AND UTILIZATION DATA REQUIRED. (a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

- (1) total gross revenue, including:
  - (A) Medicare gross revenue;
  - (B) Medicaid gross revenue;
  - (C) other revenue from state programs;
  - (D) revenue from local government programs;
  - (E) local tax support;
  - (F) charitable contributions;
  - (G) other third party payments;
  - (H) gross inpatient revenue; and
  - (I) gross outpatient revenue;
- (2) total deductions from gross revenue, including:
  - (A) contractual allowance; and
  - (B) any other deductions;
- (3) charity care;
- (4) bad debt expense;
- (5) total admissions, including:
  - (A) Medicare admissions;
  - (B) Medicaid admissions;
  - (C) admissions under a local government program;
  - (D) charity care admissions; and
  - (E) any other type of admission;

(6) total discharges;  
(7) total patient days;  
(8) average length of stay;  
(9) total outpatient visits;  
(10) total assets;  
(11) total liabilities;  
(12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:

(A) emergency care and trauma care;  
(B) neonatal intensive care;  
(C) free-standing community clinics;  
(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs; and

(E) other services that satisfy the definition of "subsidized health services" contained in Section 311.031(13);

(13) donations;  
(14) total cost of reimbursed and unreimbursed research;  
(15) total cost of reimbursed and unreimbursed education separated into the following categories:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6).

(b) The data must be based on the hospital's most recent audited financial records.

(c) The data must be submitted in the form and at the time established by the department.

(d) A hospital that does not submit to the department the data required under this section is subject to civil penalties under Section 104.043.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 360, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 11, eff. June 19, 2009.

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA. (a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

- (1) patient demographics, including race, ethnicity, age, gender, and county of residence;
- (2) admissions;
- (3) discharges, including length of inpatient treatment;
- (4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by the department;
- (5) total charges and the components of the charges;
- (6) payor sources; and
- (7) use of mechanical restraints.

(b) The data must be submitted in the form and at the time established by the department.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 6.02, eff. Sept. 1, 1993.

Sec. 311.035. USE OF DATA. (a) The department shall use the data collected under this subchapter to publish an annual report regarding:

- (1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;
- (2) the use of hospital services by indigent patients; and
- (3) the effect of indigent care services on hospitals.

(b) Repealed by Acts 1995, 74th Leg., ch. 726, Sec. 5(1), eff. Sept. 1, 1995.

(c) The department shall enter into an interagency agreement

with the Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and Texas Department of Insurance relating to the mental health and chemical dependency data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 6.03, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 726, Sec. 3, 5(1), eff. Sept. 1, 1995.

Sec. 311.036. DATA VERIFICATION. (a) Before the department may publish the report required by Section 311.035 or provide data to the public in any other manner, the department shall give each hospital a copy of the preliminary report or provide the hospital an opportunity in some other manner to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the date on which the hospital receives the preliminary report or other data, the department shall presume that the data is correct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY. (a) The following data reported or submitted to the department under this subchapter is confidential:

(1) data regarding a specific patient; or  
(2) financial data regarding a provider or facility submitted to the department before September 1, 1987. All financial data regarding a provider or facility submitted after September 1, 1987, are no longer confidential.

(b) Before the department may disclose confidential data under this subchapter, the department must remove any information that identifies a specific patient.

(c) A person commits an offense if the person:  
(1) discloses, distributes, or sells confidential data obtained under this subchapter; or  
(2) violates Subsection (b).

(d) An offense under Subsection (c) is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 3, eff. Sept. 1, 1993.

Sec. 311.039. EXEMPTION. A hospital may, but is not required to, provide the data required by Section 311.033 if the hospital:

- (1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and
- (2) does not seek or receive reimbursement for providing health care services to patients from any source, including:
  - (A) the patient or any person legally obligated to support the patient;
  - (B) a third party payor; or
  - (C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 15, eff. Sept. 1, 1997.

#### **SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE**

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, responsibilities, and benefits that apply to hospitals for providing community benefits that include charity care.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 22.01, eff. Sept. 1, 2003.

Sec. 311.042. DEFINITIONS. In this subchapter:

- (1) "Charity care" means those amounts defined as charity care in Section 311.031(2).
- (2) "Community benefits" means the unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits does not include the cost to the hospital of paying any taxes or other governmental assessments.
- (3) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-



kind donations to the hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(4) "Donations" means those amounts defined as donations in Section 311.031(5).

(5) "Education-related costs" means those amounts defined as education-related costs in Section 311.031(6).

(6) "Government-sponsored indigent health care" means those amounts defined as government-sponsored indigent health care in Section 311.031(8).

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(8) "Net patient revenue" is an accounting term and shall be calculated in accordance with generally accepted accounting principles for hospitals.

(9)(A) "Nonprofit hospital" means a hospital that is:

- (i) eligible for tax-exempt bond financing; or
- (ii) exempt from state franchise, sales, ad valorem, or other state or local taxes; and
- (iii) organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country.

(B) For purposes of this subchapter, a "nonprofit hospital" shall not include a hospital that:

- (i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;
- (ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including but not limited to the patient or any person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and
- (iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its

provision of services; or

(iv) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area.

(10) "Nonprofit supporting entities" means nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital and that are owned or controlled by the hospital or its parent entity.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(12).

(12) "Tax-exempt benefits" means all of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(13).

(14) "Unreimbursed costs" means costs as defined in Section 311.031(14).

(15) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993;  
Acts 1995, 74th Leg., ch. 781, Sec. 2, eff. Sept. 1, 1995.

Sec. 311.043. DUTY OF NONPROFIT HOSPITALS TO PROVIDE COMMUNITY BENEFITS. (a) A nonprofit hospital shall provide health care services to the community and shall comply with all federal, state, and local government requirements for tax exemption in order to maintain such exemption. These health care services to the community

shall include charity care and government-sponsored indigent health care and may include other components of community benefits as both terms are defined in Sections 311.031 and 311.042.

(b) In order to qualify as a charitable organization under Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, and to satisfy the requirements of this subchapter, a nonprofit hospital shall provide community benefits, which include charity care and government-sponsored indigent health care, in an amount that satisfies the requirements of Section 311.045. A determination of the amount of charity care and government-sponsored indigent health care provided by a hospital shall be based on the most recently completed and audited prior fiscal year of the hospital.

(c) Reductions in the amount of community benefits, which includes charity care and government-sponsored indigent health care, provided by a nonprofit hospital shall be considered reasonable when the financial reserves of the hospital are reduced to such a level that the hospital would be in violation of any applicable bond covenants, when necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.

(d) A hospital's admissions policy must provide for the admission of financially indigent and medically indigent persons pursuant to its charity care requirements as set forth in this subchapter.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.044. COMMUNITY BENEFITS PLANNING BY NONPROFIT HOSPITALS. (a) A nonprofit hospital shall develop:

(1) an organizational mission statement that identifies the hospital's commitment to serving the health care needs of the community; and

(2) a community benefits plan defined as an operational plan for serving the community's health care needs that sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care, as the terms community benefits, charity care, and government-sponsored indigent health care are defined by Sections 311.031 and 311.042, and

that identifies the populations and communities served by the hospital.

(b) When developing the community benefits plan, the hospital shall consider the health care needs of the community as determined by community-wide needs assessments. For purposes of this subsection, "community" means the primary geographic area and patient categories for which the hospital provides health care services; provided, however, that the primary geographic area shall at least encompass the entire county in which the hospital is located.

(c) The hospital shall include at least the following elements in the community benefits plan:

(1) mechanisms to evaluate the plan's effectiveness, including but not limited to a method for soliciting the views of the communities served by the hospital;

(2) measurable objectives to be achieved within a specified time frame; and

(3) a budget for the plan.

(d) In determining the community-wide needs assessment required by Subsection (b), a nonprofit hospital shall consider consulting with and seeking input from representatives of the following entities or organizations located in the community as defined by Subsection (b):

(1) the local health department;

(2) the public health region under Chapter 121;

(3) the public health district;

(4) health-related organizations, including a health professional association or hospital association;

(5) health science centers;

(6) private business;

(7) consumers;

(8) local governments; and

(9) insurance companies and managed care organizations with an active market presence in the community.

(e) Representatives of a nonprofit hospital shall consider meeting with representatives of the entities and organizations listed in Subsection (d) to assess the health care needs of the community and population served by the nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1101, Sec. 1, eff. Sept. 1,

1997.

Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE REQUIREMENTS.

(a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Bureau of State Health Data and Policy Analysis at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

(b)(1) A nonprofit hospital or hospital system may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or

(C) charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(2) For purposes of satisfying Subdivision (1)(C), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(3) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B) and (b)(1)(C) shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) For purposes of this section, a hospital that satisfies Subsection (b)(1)(A) or (b)(3) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(1)(B) or (b)(1)(C).

(e) In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

(f) A nonprofit hospital or hospital system under contract with

a local county to provide indigent health care services under Chapter 61 may credit unreimbursed costs from direct care provided to an eligible county resident toward meeting the nonprofit hospital's or system's charity care and government-sponsored indigent health care requirement.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 781, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 260, Sec. 1, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 78, eff. Sept. 1, 2001.

Sec. 311.0455. ANNUAL REPORT BY THE DEPARTMENT. (a) The department shall submit to the attorney general and comptroller not later than July 1 of each year a report listing each nonprofit hospital or hospital system that did not meet the requirements of Section 311.045 during the preceding fiscal year.

(b) The department shall submit to the attorney general and the comptroller not later than November 1 of each year a report containing the following information for each nonprofit hospital or hospital system during the preceding fiscal year:

- (1) the amount of charity care, as defined by Section 311.031, provided;
- (2) the amount of government-sponsored indigent health care, as defined by Section 311.031, provided;
- (3) the amount of community benefits, as defined by Section 311.042, provided;
- (4) the amount of net patient revenue, as defined by Section 311.042, and the amount constituting four percent of net patient revenue;
- (5) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;
- (6) a computation of the percentage by which the amount described by Subdivision (5) is above or below the dollar amount of the hospital's or hospital system's charity care and community benefits requirements;
- (7) the amount of tax-exempt benefits, as defined by Section 311.042, provided, if the hospital is required to report tax-exempt benefits under Section 311.045(b)(1)(A) or (b)(1)(B); and

(8) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(c) The department shall make the report required by Subsection (b) available to the public and shall issue a press release concerning the availability of the report.

(d) For purposes of Subsection (b), "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1997, 75th Leg., ch. 260, Sec. 2, eff. Jan. 1, 1998.

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section:

(1) "Department" means the Department of State Health Services.

(2) "Nonprofit hospital" has the meaning assigned by Section 311.042(9)(A).

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the most recent fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a written request for certification to the department not later than May 31 of each year stating that the hospital or system is eligible for certification. The department must determine eligibility for certification not later than December 31 of the year in which the department receives the request by



checking the report submitted by the hospital or system under Section 311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Section 311.045. If a report under Section 311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement of Subsection (c)(1) is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification. The department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on December 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 22.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 376 (S.B. [1378](#)), Sec. 1, eff. June 17, 2005.

Sec. 311.046. ANNUAL REPORT OF COMMUNITY BENEFITS PLAN. (a) A nonprofit hospital shall prepare an annual report of the community

benefits plan and shall include in the report at least the following information:

- (1) the hospital's mission statement;
- (2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b);
- (3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;
- (4) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and
- (5) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in Subdivision (4) and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards".

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Bureau of State Health Data and Policy Analysis at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report of the community benefits plan is public information; that it is filed with the department; and that it is available to the public on request from the department. The statement shall be posted in prominent places throughout the hospital, including but not limited to the emergency room waiting area and the admissions office waiting area. The statement shall also be printed in the hospital patient guide or other material that provides the patient with information about the admissions criteria of the hospital.

(d) Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program, including the charity care and eligibility policies of the program, and how to apply for charity care. Such notice shall also be conspicuously

posted in the general waiting area, in the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program and policies. Each hospital shall annually publish notice of the hospital's charity care program and policies in a local newspaper of general circulation in the county. Each notice under this subsection must be written in language readily understandable to the average reader.

(e) For purposes of this section, "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

- (1) a Medicaid disproportionate share hospital; or
- (2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 260, Sec. 3, eff. Jan. 1, 1998;  
Acts 2001, 77th Leg., ch. 654, Sec. 2, eff. Sept. 1, 2001.

Sec. 311.0461. INFORMATIONAL MANUAL. The department shall annually publish a manual that lists each nonprofit hospital in this state with a brief summary of the charity care policies and community benefits that the nonprofit hospital provides.

Added by Acts 2001, 77th Leg., ch. 654, Sec. 3, eff. Sept. 1, 2001.

Sec. 311.047. PENALTIES. The department may assess a civil penalty against a nonprofit hospital that fails to make a report of the community benefits plan as required under this subchapter. The penalty may not exceed \$1,000 for each day a report is delinquent after the date on which the report is due. No penalty may be assessed against a hospital under this subsection until 10 business days have elapsed after written notification to the hospital of its failure to file a report.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.048. RIGHTS AND REMEDIES. The rights and remedies provided for in this subchapter shall not limit, affect, change, or repeal any other statutory or common-law rights or remedies available to the state or a nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

**SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS  
ASSOCIATED WITH NONPROFIT FRATERNAL ORGANIZATIONS**

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital that employs or seeks to employ a physician, that primarily provides medical care to children younger than 18 years of age, and that:

- (1) is owned or operated by a nonprofit fraternal organization; or
- (2) has a governing body the majority of members of which belong to a nonprofit fraternal organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital satisfies the requirements of this subchapter.

(b) The billing and receipt of third-party reimbursement for medical care at a hospital does not affect the authority granted to the hospital under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.063. DUTIES AND HOSPITAL POLICIES. (a) A hospital that employs physicians under this subchapter shall:

- (1) appoint a chief medical officer, who may be a member of

the hospital's medical staff;

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital; and

(3) designate the chief medical officer as the contact for the Texas Medical Board for all matters relating to complaints regarding interference or attempted interference with a physician's independent medical judgment or any other matter under this section.

(b) The person appointed as chief medical officer shall report the person's appointment to the Texas Medical Board.

(c) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(d) The policies adopted under this section must be approved by the chief medical officer.

(e) In the event of a conflict between a policy approved by the chief medical officer and any other policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve the conflict.

(f) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer.

(g) The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.064. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

**SUBCHAPTER F. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS**

Sec. 311.081. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER.

(a) This subchapter applies only to a hospital that employs or seeks to employ a physician and that:

(1) is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;

(2) is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or

(3) is located in a county with a population of 50,000 or less.

(b) This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B, Title 3, Occupations Code.

(c) This subchapter applies to medical services provided by a physician at the hospital and other health care facilities owned or operated by the hospital.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.

Redesignated from Health and Safety Code, Section 311.061 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.082. EMPLOYMENT OF PHYSICIANS PERMITTED. A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital and other health care facilities owned or operated by the hospital if the hospital satisfies the requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff.

May 12, 2011.

Redesignated from Health and Safety Code, Section 311.062 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.083. HOSPITAL DUTIES AND POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer who has been recommended by the medical staff of the hospital and approved by the governing board of the hospital; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital.

(b) The policies adopted under this section must include:

(1) policies relating to:

- (A) credentialing and privileges;
- (B) quality assurance;
- (C) utilization review;
- (D) peer review and due process; and
- (E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(c) The policies adopted under this section must be approved by the medical staff of the hospital.

(d) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer of the hospital. The policies adopted under this section must be approved by the medical staff of the hospital. In the event of a conflict between a policy adopted by the medical staff and a policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve any such conflict.

(e) The chief medical officer shall notify the Texas Medical Board that the hospital is employing physicians under this subchapter and that the chief medical officer will be the hospital's designated contact with the Texas Medical Board. The chief medical officer

shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(f) The hospital shall give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the hospital and physicians not employed by the hospital.

(g) A physician employed by a hospital shall retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and may not be disciplined for reasonably advocating for patient care.

(h) If a hospital provides professional liability coverage for a physician employed by a hospital, the physician may participate in the selection of the professional liability coverage, has the right to an independent defense if the physician pays for that independent defense, and shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

(i) If a physician employed by a hospital enters into an employment agreement that includes a covenant not to compete, the agreement shall be subject to Section 15.50, Business & Commerce Code, and any other applicable provisions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.

Redesignated from Health and Safety Code, Section 311.063 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

## **CHAPTER 312. MEDICAL AND DENTAL CLINICAL EDUCATION IN PUBLIC HOSPITALS**

Sec. 312.001. FINDING; PURPOSE. (a) The legislature finds that the clinical education of medical and dental students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school and the provision of patient care to public hospitals can be more effectively and economically undertaken if those institutions and hospitals coordinate and cooperate, rather than compete, in their common endeavors.

(b) The purpose of this chapter is to authorize coordination and cooperation between medical and dental units, supported medical



or dental schools, and public hospitals and to remove impediments to that coordination and cooperation in order to:

- (1) enhance the education of students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school;
- (2) enhance patient care; and
- (3) avoid any waste of public money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Coordinating entity" means a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) that is a health organization approved and certified by the Texas State Board of Medical Examiners under Chapter 162, Occupations Code.
- (4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.
- (5) "Public hospital" means a hospital, clinic, or other facility for the provision of health care or dental care that is owned or operated by the federal government, the state, or a political subdivision or municipal corporation of the state, including a hospital district or authority.
- (6) "Supported medical or dental school" means a medical school or dental school organized as a nonprofit corporation that is under contract with the Texas Higher Education Coordinating Board to provide educational services under Subchapter D, Chapter 61, Education Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.791, eff. Sept. 1, 2001.

Sec. 312.003. AGREEMENT REQUIRED. This chapter applies only if a medical and dental unit and a supported medical or dental school agree, either directly or through a coordinating entity, to provide or cause to be provided medical, dental, or other patient care or services or to perform or cause to be performed medical, dental, or

clinical education, training, or research activities in a coordinated or cooperative manner in a public hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.004. CONTRACTS FOR COORDINATION OR COOPERATION. (a) Medical and dental units, supported medical or dental schools, coordinating entities, and public hospitals may make and perform contracts among each other for the coordinated or cooperative clinical education of the students, interns, residents, and fellows enrolled at the units or schools.

(b) Medical and dental units and supported medical or dental schools may undertake coordination or cooperation of clinical education directly or through a coordinating entity.

(c) A medical and dental unit, a supported medical or dental school, and a coordinating entity may contract with the owner or operator of a public hospital for the clinical education of students, interns, residents, and fellows enrolled at the unit or school.

(d) The contracting parties may determine the terms of and the consideration for a contract authorized under this section.

(e) The contract may provide for the coordinated, cooperative, or exclusive assignment of the interns, residents, fellows, faculty, and associated health care professionals of the participating medical and dental units and supported medical or dental schools to provide or perform health or dental services or research at a public hospital.

(f) Coordinated or cooperative activities authorized under this section may be performed by or on behalf of one or more of the units, schools, or entities involved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective, a contract under Section 312.004 must be submitted to the board.

(b) The commissioner shall review the contract on behalf of the board. The commissioner shall approve the contract if the commissioner finds the contract furthers the purposes of this chapter.

(c) The commissioner may disapprove a contract only after

notice to all parties and a hearing.

(d) The commissioner may not modify a contract.

(e) The contract takes effect:

(1) when it is approved by the commissioner; or

(2) on the 31st day after the date on which the contract is filed with the board by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the commissioner does not approve or disapprove the contract within 30 days after the date on which the contract is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.006. LIMITATION ON LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating entity engaged in coordinated or cooperative medical or dental clinical education under Section 312.004, including patient care and the provision or performance of health or dental services or research at a public hospital, is not liable for its acts and omissions in connection with those activities except to the extent and up to the maximum amount of liability of state government under Section 101.023(a), Civil Practice and Remedies Code, for the acts and omissions of a governmental unit of state government under Chapter 101, Civil Practice and Remedies Code.

(b) The limitation on liability provided by this section applies regardless of whether the medical and dental unit, supported medical or dental school, or coordinating entity is a "governmental unit" as defined by Section 101.001, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.007. INDIVIDUAL LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating entity is a state agency, and a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of a medical and dental unit, supported medical or dental school, or coordinating entity is an employee of a state agency for purposes of Chapter 104, Civil Practice and Remedies Code, and for

purposes of determining the liability, if any, of the person for the person's acts or omissions while engaged in the coordinated or cooperative activities of the unit, school, or entity.

(b) A judgment in an action or settlement of a claim against a medical and dental unit, supported medical or dental school, or coordinating entity under Chapter 101, Civil Practice and Remedies Code, bars any action involving the same subject matter by the claimant against a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of the unit, school, or entity whose act or omission gave rise to the claim as if the person were an employee of a governmental unit against which the claim was asserted as provided under Section 101.106, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT**

Sec. 313.001. SHORT TITLE. This chapter may be cited as the Consent to Medical Treatment Act.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(3-a) "Home and community support services agency" means a facility licensed under Chapter 142.

(4) "Hospital" means a facility licensed under Chapter 241.

(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed

treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter 242.

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home;

(C) is receiving services from a home and community support services agency; or

(D) is an inmate of a county or municipal jail.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 1, eff. September 1, 2011.

Sec. 313.003. EXCEPTIONS AND APPLICATION. (a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Chapter XII, Texas Probate Code;

(3) consent to medical treatment of minors under Chapter

32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1999, 76th Leg., ch. 450, Sec. 2.01, eff. Sept. 1, 1999.

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) a majority of the patient's reasonably available adult children;

(4) the patient's parents; or

(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction under Chapter V, Texas Probate Code.

(c) Any medical treatment consented to under Subsection (a) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

- (1) voluntary inpatient mental health services;
- (2) electro-convulsive treatment; or
- (3) the appointment of another surrogate decision-maker.

(e) Notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

- (1) psychotropic medication;
- (2) involuntary inpatient mental health services; or
- (3) psychiatric services calculated to restore competency

to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Chapter XIII, Texas Probate Code, may consent to medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 2, eff. September 1, 2011.

Sec. 313.005. PREREQUISITES FOR CONSENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

- (1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

- (2) proposed medical treatment in the patient's medical

record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 3, eff. September 1, 2011.

Sec. 313.006. LIABILITY FOR MEDICAL TREATMENT COSTS. Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.007. LIMITATION ON LIABILITY. (a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for



or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 4, eff. September 1, 2007.

#### **CHAPTER 314. COOPERATIVE AGREEMENTS AMONG HOSPITALS**

Sec. 314.001. DEFINITIONS. In this chapter:

(1) "Attorney general" means the attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(2) "Cooperative agreement" means an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(3) "Department" means the Texas Department of Health.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or a private mental hospital licensed under Chapter 577.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.

Renumbered from Health & Safety Code Sec. 313.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.002. REVIEW AND CERTIFICATION OF COOPERATIVE AGREEMENTS. (a) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not

involve price fixing or predatory pricing.

(b) Parties to a cooperative agreement may apply to the department for a certification of public advantage governing the cooperative agreement. The application must include a written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to the department at the same time. The department shall charge an application fee in an amount not to exceed \$10,000 per application.

(c) The department shall review the application in accordance with the standards set forth in Subsections (e) and (f) and shall, if requested, hold a public hearing in accordance with rules adopted by the department. The department shall grant or deny the application within 120 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor within 10 days of its issuance.

(d) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(e) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) enhancement of the quality of hospital and hospital-related care provided to Texas citizens;

(2) preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;

(3) gains in the cost efficiency of services provided by the hospitals involved;

(4) improvements in the utilization of hospital resources and equipment; and

(5) avoidance of duplication of hospital resources.

(f) The department's evaluation of any disadvantages

attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(1) the extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

(2) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, hospitals;

(3) the extent of any adverse impact on patients in the quality, availability, and price of health care services; and

(4) the availability of arrangements that are less restrictive to competition and achieve similar benefits.

(g) The department shall consult with the attorney general regarding any potential reduction in competition that may result from a cooperative agreement. The attorney general shall review the application and all supporting documents provided by the applicants, any documents or other information provided by any intervenors, and any documents or testimony provided at a public hearing, if any, on the application and shall advise the department whether the proposed cooperative agreement would have inappropriate impact on competition. If the attorney general advises the department to deny an application, the attorney general shall state the basis and reasons for the recommended denial.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 313.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.003. ATTORNEY GENERAL AUTHORITY. (a) The attorney general, at any time after an application is filed under Section 314.002(b), may require by civil investigative demand the attendance and testimony of witnesses and the production of documents in Travis County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in Section 314.002. All nonpublic documents

produced and testimony given to the attorney general are subject to the prohibitions on disclosure and use of Section 15.10(i), Business & Commerce Code. The attorney general may seek an order from the district court compelling compliance with a civil investigative demand issued under this section.

(b) The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate but, except as provided in Subsection (e), the action must be brought not later than 20 days following the attorney general's receipt of a copy of the final and appealable decision of the department.

(c) Upon the filing of the complaint in an action under Subsection (b), the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

(d) In any action brought under Subsection (b), the applicants for a certificate bear the burden of establishing by clear and convincing evidence that in accordance with Sections 314.002(e) and (f), the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Texas courts concerning unreasonable restraint of trade under 15 U.S.C. Sections 1 and 2, and Chapter 15, Business & Commerce Code.

(e) If, at any time following the 20-day period specified in Subsection (b), the attorney general determines that as a result of changed circumstances the benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in the district court seeking to cancel the certificate of public advantage. The standard for adjudication for an action brought under this subsection is as follows:

(1) except as provided in Subdivision (2), in any action

brought under this subsection the attorney general has the burden of establishing by a preponderance of the evidence that as a result of changed circumstances the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement;

(2) in any action under this subsection, if the attorney general first establishes by a preponderance of evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 313.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.003, eff. September 1, 2011.

Sec. 314.004. MONITORING OF APPROVED COOPERATIVE AGREEMENTS.

(a) If, at any time following the approval of a cooperative agreement by the department, the department determines that as a result of changed circumstances the benefits resulting from an approved agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the department may initiate proceedings to terminate the certificate of public advantage.

(b) The department may request documents from the parties to the cooperative agreement regarding the current status of the agreement, including information relative to the continued benefits and any disadvantages of the agreement and shall, if requested, hold a public hearing to solicit additional information concerning the effects of the cooperative agreement.

(c) If the department determines that the likely benefits

resulting from an approved cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may terminate the certificate of public advantage.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.005. JUDICIAL REVIEW OF DEPARTMENT ACTION. Any party aggrieved by a decision of the department in granting or denying an application, refusing to act on an application, or terminating a certificate is entitled to judicial review of the decision in accordance with Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered by Health & Safety Code Sec. 313.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.006. VALIDITY OF CERTIFIED COOPERATIVE AGREEMENTS.

(a) Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct.

(b) If the department, or in any action by the attorney general the district court, determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Nothing in this chapter exempts hospitals from compliance with the requirements of Chapters 241 or 577 of this code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 313.006 by Acts 1995, 74th  
Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.007. MERGERS AND CONSOLIDATIONS INVOLVING HOSPITALS.  
The provisions of this chapter do not apply to any agreement among  
hospitals by which ownership or control over substantially all of the  
stock, assets of activities of one or more previously licensed and  
operating hospitals is placed under the control of another licensed  
hospital or hospitals.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 313.007 by Acts 1995, 74th  
Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.008. AUTHORITY TO ADOPT RULES; EFFECTIVE DATE. (a)  
This Act specifically excludes ground and/or air ambulance services.

(b) The department shall have the authority to adopt rules to  
implement the requirements of this chapter. Such rules shall be  
adopted by March 1, 1994, at which time hospitals may file an  
application with the department for a certification of public  
advantage.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 313.008 by Acts 1995, 74th  
Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

#### **CHAPTER 315. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITALS**

Sec. 315.001. DEFINITION. In this chapter, "local governmental  
entity" includes:

- (1) a hospital district created under general or special  
law;
- (2) a municipal hospital authority;
- (3) a county hospital authority;
- (4) a municipality; or
- (5) a county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff.

September 1, 2011.

Sec. 315.002. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITAL; SECURITY. (a) A local governmental entity may borrow money for purposes of a hospital owned or operated by the entity at a rate not to exceed the maximum annual percentage rate allowed by the law at the time the loan is made for similar obligations of the entity.

(b) To secure a loan under this section, a local governmental entity may pledge:

(1) revenue from the hospital owned or operated by the entity that is not pledged to pay the entity's bonded indebtedness; or

(2) tax revenue to be collected by the local governmental entity during the 12-month period following the date of the pledge that is not pledged to pay the principal of or interest on bonds.

(c) A loan authorized by this section must mature:

(1) not later than the first anniversary of the date the loan is made, if taxes are pledged to repay the loan; and

(2) not later than the fifth anniversary of the date the loan is made, if hospital revenue is pledged to repay the loan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff. September 1, 2011.

#### **CHAPTER 316. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES**

Sec. 316.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.04, eff. September 28, 2011.

#### **SUBTITLE G. PROVISION OF SERVICES IN CERTAIN FACILITIES** **CHAPTER 321. PROVISION OF MENTAL HEALTH, CHEMICAL DEPENDENCY, AND REHABILITATION SERVICES**

Sec. 321.001. DEFINITIONS. In this chapter:



(1) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(2) "Hospital" has the meaning assigned by Section 241.003.

(3) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(4) "Mental health facility" has the meaning assigned by Section 571.003.

(5) "State health care regulatory agency" means a state agency that licenses a health care professional.

(6) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 321.002. BILL OF RIGHTS. (a) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse by rule shall each adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the agencies consider necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, each agency shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

(A) the patient cannot comprehend the information because of illness, age, or other factors; or

(B) an emergency exists that precludes immediate presentation of the information.

(b) The Board of Protective and Regulatory Services by rule shall adopt a "children's bill of rights" for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

(c) A "bill of rights" adopted under this section must specifically address the rights of minors and provide that a minor is entitled to:

- (1) appropriate treatment in the least restrictive setting available;
- (2) not receive unnecessary or excessive medication;
- (3) an individualized treatment plan and to participate in the development of the plan; and
- (4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(d) Rules adopted under this section shall provide for:

- (1) treatment of minors by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors;
- (2) separation of minor patients from adult patients; and
- (3) regular communication between a minor patient and the patient's family, subject only to a restriction in accordance with Section 576.006.

(e) The Texas Board of Health, Texas Board of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and Board of Protective and Regulatory Services shall consult each other for assistance in adopting rules under this section.

(f) Before a facility may admit a patient for inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services, or before a child-care facility may accept a minor for treatment, the facility shall provide to the person and, if appropriate, to the person's parent, managing conservator, or guardian, a written copy of the applicable "bill of rights" adopted under this section. The facility shall provide the written copies in the person's primary language, if possible. In addition, the facility shall ensure that, within 24 hours after the person is admitted to the facility, the rights specified in the written copy are explained to the person and, if appropriate, to the person's parent, managing conservator, or guardian:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(g) The facility shall ensure that:

(1) each patient admitted for inpatient mental health, chemical dependency, or comprehensive rehabilitation services and each minor admitted for treatment in a child-care facility and, if appropriate, the person's parent, managing conservator, or guardian signs a copy of the document stating that the person has read the document and understands the rights specified in the document; and

(2) the signed copy is made a part of the person's clinical record.

(h) A facility shall prominently and conspicuously post a copy of the "bill of rights" for display in a public area of the facility that is readily available to patients, residents, employees, and visitors. The "bill of rights" must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 321.003. SUIT FOR HARM RESULTING FROM VIOLATION. (a) A treatment facility or mental health facility that violates a provision of, or a rule adopted under, this chapter, Subtitle C of Title 7, or Chapter 241, 462, 464, or 466 is liable to a person receiving care or treatment in or from the facility who is harmed as a result of the violation.

(b) A person who has been harmed by a violation may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff received care or treatment; or
- (2) the defendant conducts business.

(f) A person harmed by a violation must bring suit not later than the second anniversary of the date on which the person's injury is discovered, except that a minor whose injury is discovered before the minor's 18th birthday may bring suit at any time before the minor's 20th birthday.

(g) This section does not supersede or abrogate any other remedy existing in law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 321.004. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

## **CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE FACILITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Facility" means:

(A) a child-care institution, as defined by Section 42.002, Human Resources Code, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation;

(B) an intermediate care facility licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

(2) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

#### **SUBCHAPTER B. RESTRAINTS AND SECLUSION**

Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES.

(a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

(b-1) The rules must:

(1) authorize a registered nurse, other than the nurse who initiated the use of restraint or seclusion, who is trained to assess medical and psychiatric stability with demonstrated competence as required by rule to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, not later than one hour after the time the use of restraint or seclusion is initiated; and

(2) require a physician to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, and document clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of the restraint or seclusion.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 1, eff. June 14, 2013.

Sec. 322.053. NOTIFICATION. The executive commissioner of the

Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.054. RETALIATION PROHIBITED. (a) A facility may not discharge or otherwise retaliate against:

(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:

(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or

(2) place on probation a facility that violates Subsection (a).

(c) A health and human services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an

administrative penalty imposed against the facility by the agency under the other law.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.055. MEDICAID WAIVER PROGRAM. A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.056. REPORTING REQUIREMENT. A facility shall file with the Department of State Health Services a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 2, eff. June 14, 2013.

### **CHAPTER 323. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT**

Sec. 323.001. DEFINITIONS. In this chapter:

(1) "Community-wide plan" means an agreement entered into between one or more health care facilities, entities administering a sexual assault program, district attorney's offices, or law enforcement agencies that designates one or more health care facilities in the community as a primary health care facility to furnish emergency medical services and evidence collection to sexual assault survivors on a community or area-wide basis.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241 or a general or special hospital owned by this state.



(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Sec. 323.002. PLAN FOR EMERGENCY SERVICES. (a) Each health care facility that has an emergency department shall comply with Section 323.004. At the request of the department, a health care facility that has an emergency department shall submit to the department for approval a plan for providing the services required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

(b) The department shall adopt procedures for submission, approval, and modification of a plan required under this section.

(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the department requests the plan.

(d) The department shall approve or reject the plan not later than the 120th day after the date the plan is submitted.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(10), eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 1, eff. September 1, 2013.

Sec. 323.003. REJECTION OF PLAN. (a) If a plan required under

Section 323.002 is not approved, the department shall:

- (1) return the plan to the health care facility; and
- (2) identify the specific provisions under Section 323.004 with which the plan conflicts or does not comply.

(b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.003 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(11), eff. September 1, 2007.

Sec. 323.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES. (a) Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following an alleged sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

(a-1) A facility that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall inform the survivor that:

- (1) the facility is not the designated facility and provide to the survivor the name and location of the designated facility; and
- (2) the survivor is entitled, at the survivor's option:
  - (A) to receive the care described by Subsection (b) at that facility, subject to Subsection (b-1); or
  - (B) to be stabilized and to be transferred to and receive the care described by Subsection (b) at a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors.

(a-2) If a sexual assault survivor chooses to be transferred under Subsection (a-1)(2)(B), after obtaining the survivor's written, signed consent to the transfer, the facility shall stabilize and

transfer the survivor to a health care facility in the community designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors, which shall provide care to the survivor in accordance with Subsection (b).

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Article 56.06, Code of Criminal Procedure, or is conducted under Article 56.065, Code of Criminal Procedure;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;

(4) the information form required by Section 323.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

(7) the name and telephone number of the nearest sexual assault crisis center.

(b-1) A person may not perform a forensic examination on a sexual assault survivor unless the person has the basic training described by Section 323.0045 or the equivalent education and training.

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment.

(d) This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. Section 1395dd) that are applicable to the facility.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September

1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(12), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 4, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 2, eff. September 1, 2013.

Sec. 323.0045. BASIC SEXUAL ASSAULT FORENSIC EVIDENCE COLLECTION TRAINING. (a) A person who performs a forensic examination on a sexual assault survivor must have at least basic forensic evidence collection training or the equivalent education.

(b) A person who completes a continuing medical or nursing education course in forensic evidence collection that is approved or recognized by the appropriate licensing board is considered to have basic sexual assault forensic evidence training for purposes of this chapter.

(c) Each health care facility that has an emergency department and that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall develop a plan to train personnel on sexual assault forensic evidence collection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 3, eff. September 1, 2013.

Sec. 323.005. INFORMATION FORM. (a) The department shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed

for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that:

(i) a law enforcement agency will pay for the forensic portion of an examination requested by the agency under Article 56.06, Code of Criminal Procedure, and for the evidence collection kit; or

(ii) the Department of Public Safety will pay the appropriate fees for the forensic portion of an examination conducted under Article 56.065, Code of Criminal Procedure, and for the evidence collection kit; and

(B) reimbursement information for the medical portion of the examination;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide; and

(7) information regarding postexposure prophylaxis for HIV infection.

(b) A health care facility shall use the standard form developed under this section.

(c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 5, eff. June 19, 2009.

Sec. 323.006. INSPECTION. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 322.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Sec. 323.007. SEXUAL ASSAULT SURVIVORS WHO ARE MINORS. This chapter does not affect participating entities of children's advocacy centers under Subchapter E, Chapter 264, Family Code, or the working protocols set forth by their multidisciplinary teams to ensure access to specialized medical assessments for sexual assault survivors who are minors. To the extent of a conflict with Subchapter E, Chapter 264, Family Code, that subchapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.

Sec. 323.008. DATA PUBLICATION. The department shall post on the department's Internet website a list of all hospitals that are designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.

**CHAPTER 324. CONSUMER ACCESS TO HEALTH CARE INFORMATION**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 324.001. DEFINITIONS. In this chapter:

- (1) "Average charge" means the mathematical average of

facility charges for an inpatient admission or outpatient surgical procedure. The term does not include charges for a particular inpatient admission or outpatient surgical procedure that exceed the average by more than two standard deviations.

(2) "Billed charge" means the amount a facility charges for an inpatient admission, outpatient surgical procedure, or health care service or supply.

(3) "Costs" means the fixed and variable expenses incurred by a facility in the provision of a health care service.

(4) "Consumer" means any person who is considering receiving, is receiving, or has received a health care service or supply as a patient from a facility. The term includes the personal representative of the patient.

(5) "Department" means the Department of State Health Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Facility" means:

(A) an ambulatory surgical center licensed under Chapter 243;

(B) a birthing center licensed under Chapter 244; or

(C) a hospital licensed under Chapter 241.

(8) "Facility-based physician" means a radiologist, an anesthesiologist, a pathologist, an emergency department physician, or a neonatologist.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 4, eff. June 19, 2009.

Sec. 324.002. RULES. The executive commissioner shall adopt and enforce rules to further the purposes of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

#### **SUBCHAPTER B. CONSUMER GUIDE TO HEALTH CARE**

Sec. 324.051. DEPARTMENT WEBSITE. (a) The department shall make available on the department's Internet website a consumer guide to health care. The department shall include information in the guide concerning facility pricing practices and the correlation between a facility's average charge for an inpatient admission or outpatient surgical procedure and the actual, billed charge for the admission or procedure, including notice that the average charge for a particular inpatient admission or outpatient surgical procedure will vary from the actual, billed charge for the admission or procedure based on:

- (1) the person's medical condition;
- (2) any unknown medical conditions of the person;
- (3) the person's diagnosis and recommended treatment protocols ordered by the physician providing care to the person; and
- (4) other factors associated with the inpatient admission or outpatient surgical procedure.

(b) The department shall include information in the guide to advise consumers that:

- (1) the average charge for an inpatient admission or outpatient surgical procedure may vary between facilities depending on a facility's cost structure, the range and frequency of the services provided, intensity of care, and payor mix;
- (2) the average charge by a facility for an inpatient admission or outpatient surgical procedure will vary from the facility's costs or the amount that the facility may be reimbursed by a health benefit plan for the admission or surgical procedure;
- (3) the consumer may be personally liable for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply depending on the consumer's health benefit plan coverage;
- (4) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply; and
- (5) the consumer, if uninsured, may be eligible for a discount on facility charges based on a sliding fee scale or a written charity care policy established by the facility.

(c) The department shall include on the consumer guide to



health care website:

(1) an Internet link for consumers to access quality of care data, including:

(A) the Texas Health Care Information Collection website;

(B) the Hospital Compare website within the United States Department of Health and Human Services website;

(C) the Joint Commission on Accreditation of Healthcare Organizations website; and

(D) the Texas Hospital Association's Texas PricePoint website; and

(2) a disclaimer noting the websites that are not provided by this state or an agency of this state.

(d) The department may accept gifts and grants to fund the consumer guide to health care. On the department's Internet website, the department may not identify, recognize, or acknowledge in any format the donors or grantors to the consumer guide to health care.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. [1731](#)), Sec. 1, eff. September 1, 2007.

#### **SUBCHAPTER C. BILLING OF FACILITY SERVICES AND SUPPLIES**

Sec. 324.101. FACILITY POLICIES. (a) Each facility shall develop, implement, and enforce written policies for the billing of facility health care services and supplies. The policies must address:

(1) any discounting of facility charges to an uninsured consumer, subject to Chapter 552, Insurance Code;

(2) any discounting of facility charges provided to a financially or medically indigent consumer who qualifies for indigent services based on a sliding fee scale or a written charity care policy established by the facility and the documented income and other resources of the consumer;

(3) the providing of an itemized statement required by Subsection (e);

(4) whether interest will be applied to any billed service not covered by a third-party payor and the rate of any interest charged;

(5) the procedure for handling complaints;

(6) the providing of a conspicuous written disclosure to a consumer at the time the consumer is first admitted to the facility or first receives services at the facility that:

(A) provides confirmation whether the facility is a participating provider under the consumer's third-party payor coverage on the date services are to be rendered based on the information received from the consumer at the time the confirmation is provided;

(B) informs consumers that a facility-based physician who may provide services to the consumer while the consumer is in the facility may not be a participating provider with the same third-party payors as the facility;

(C) informs consumers that the consumer may receive a bill for medical services from a facility-based physician for the amount unpaid by the consumer's health benefit plan;

(D) informs consumers that the consumer may request a listing of facility-based physicians who have been granted medical staff privileges to provide medical services at the facility; and

(E) informs consumers that the consumer may request information from a facility-based physician on whether the physician has a contract with the consumer's health benefit plan and under what circumstances the consumer may be responsible for payment of any amounts not paid by the consumer's health benefit plan;

(7) the requirement that a facility provide a list, on request, to a consumer to be admitted to, or who is expected to receive services from, the facility, that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility; and

(8) if the facility operates a website that includes a listing of physicians who have been granted medical staff privileges to provide medical services at the facility, the posting on the facility's website of a list that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility and the updating of the list in any calendar quarter in which there are any changes to the list.

(b) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the hospital shall provide the written disclosure required by Subsection (a)(6)

before discharging the patient from the emergency department or hospital, as appropriate.

(c) Each facility shall post in the general waiting area and in the waiting areas of any off-site or on-site registration, admission, or business office a clear and conspicuous notice of the availability of the policies required by Subsection (a).

(d) The facility shall provide an estimate of the facility's charges for any elective inpatient admission or nonemergency outpatient surgical procedure or other service on request and before the scheduling of the admission or procedure or service. The estimate must be provided not later than the 10th business day after the date on which the estimate is requested. The facility must advise the consumer that:

(1) the request for an estimate of charges may result in a delay in the scheduling and provision of the inpatient admission, outpatient surgical procedure, or other service;

(2) the actual charges for an inpatient admission, outpatient surgical procedure, or other service will vary based on the person's medical condition and other factors associated with performance of the procedure or service;

(3) the actual charges for an inpatient admission, outpatient surgical procedure, or other service may differ from the amount to be paid by the consumer or the consumer's third-party payor;

(4) the consumer may be personally liable for payment for the inpatient admission, outpatient surgical procedure, or other service depending on the consumer's health benefit plan coverage; and

(5) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for the inpatient admission, outpatient surgical procedure, or other service.

(e) A facility shall provide to the consumer at the consumer's request an itemized statement of the billed services if the consumer requests the statement not later than the first anniversary of the date the person is discharged from the facility. The facility shall provide the statement to the consumer not later than the 10th business day after the date on which the statement is requested.

(f) A facility shall provide an itemized statement of billed

services to a third-party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third-party payor must request the statement from the facility and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The facility shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third-party payor receives a claim for payment of part but not all of the billed services, the third-party payor may request an itemized statement of only the billed services for which payment is claimed or to which any deduction or copayment applies.

(g) A facility in violation of this section is subject to enforcement action by the appropriate licensing agency.

(h) If a consumer or a third-party payor requests more than two copies of the statement, the facility may charge a reasonable fee for the third and subsequent copies provided. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$30;

(2) a charge for each page of:

(A) \$1 for the 11th through the 60th page of the provided copies;

(B) 50 cents for the 61st through the 400th page of the provided copies; and

(C) 25 cents for any remaining pages of the provided copies; and

(3) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(i) If a consumer overpays a facility, the facility must refund the amount of the overpayment not later than the 30th day after the date the facility determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. [1731](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 5, eff. June 19, 2009.

Sec. 324.102. COMPLAINT PROCESS. A facility shall establish and implement a procedure for handling consumer complaints, and must make a good faith effort to resolve the complaint in an informal manner based on its complaint procedures. If the complaint cannot be resolved informally, the facility shall advise the consumer that a complaint may be filed with the department and shall provide the consumer with the mailing address and telephone number of the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

Sec. 324.103. CONSUMER WAIVER PROHIBITED. The provisions of this chapter may not be waived, voided, or nullified by a contract or an agreement between a facility and a consumer.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

#### **CHAPTER 325. NOTICE OF SEX OFFENDER STATUS TO RESIDENTS OF GROUP HOME**

Sec. 325.001. DEFINITIONS. In this chapter:

- (1) "Director" means the administrator primarily responsible for the operation of a group home.
- (2) "Group home" includes:
  - (A) an assisted living facility, as defined by Section 247.002;
  - (B) a boarding home facility, as defined by Section 260.001;
  - (C) a facility as defined by Section 246.002;
  - (D) a supportive housing facility operated by the state, a local government, or a private agency that provides supportive services to persons with mental illness, substance use conditions, or physical disabilities who require access to rehabilitative services and a stable living arrangement to maintain

consistent treatment regimens; and

(E) a transitional housing facility designed to facilitate the transition from inpatient to outpatient care or, within a reasonable time, the transition from homelessness to permanent housing for persons with serious mental illnesses, substance use conditions, or physical disabilities and who may require intensive case management and assistance with long-term goal planning and independent living skills.

(3) "Resident" means a person who resides and receives services at a group home.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a group home that accepts or is assigned only residents who are sex offenders required to register under Chapter 62, Code of Criminal Procedure, if the residents receive treatment at the group home from a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.003. SEX OFFENDER STATUS CHECK. Except as provided by Section 325.002, as soon as practicable after a person requests to live at a group home or is assigned to live at a group home as a condition of community supervision or as a condition of release on parole or to mandatory supervision, the director of the group home shall ascertain whether the person is registered under Chapter 62, Code of Criminal Procedure, by consulting the Internet website maintained by the Department of Public Safety that contains the sex offender database.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.004. NOTICE TO OTHER RESIDENTS REQUIRED. If based on

information obtained under Section 325.003 the director ascertains that a person is a registered sex offender, not later than the third day after the date the person becomes a resident of the group home, the director shall provide notice that the person is a sex offender to the legal guardian of each current resident who has a legal guardian and directly to each other resident. The notice must contain all of the information about the person that is available on the website described by Section 325.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.005. IMMUNITY FOR RELEASE OF PUBLIC INFORMATION. A group home or its director is not liable under any law for damages arising from conduct required under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

## TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

### SUBTITLE A. SANITATION

#### CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 341.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.
- (4) "Human excreta" means the urinary and bowel discharges of a human.
- (5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.
- (6) "Privy" means a facility for the disposal of human

excreta.

(7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.

(8) "Septic tank" means a covered water-tight tank designed for sewage treatment.

(9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.

(10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION. The board may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. NUISANCES AND GENERAL SANITATION**

Sec. 341.011. NUISANCE. Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;



(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 130, Sec. 1, eff. May 27, 2003.

Sec. 341.012. ABATEMENT OF NUISANCE. (a) A person shall abate a public health nuisance existing in or on a place the person

possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE. (a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of

other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.014. DISPOSAL OF HUMAN EXCRETA. (a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the board. A privy may not be constructed or maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health

authority or the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.015. SANITATION OF ICE PLANTS. (a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

(e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY. (a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions

caused by processes that may cause ill health of industrial workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES. (a) The board shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.018. RODENT CONTROL. (a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, fumigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The board shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY. (a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

- (1) the identity of the treating authority;
- (2) the purpose and date of the treatment;
- (3) a description of the areas of the property treated with larvicide;
- (4) the type of larvicide used; and
- (5) any known risks of the larvicide to humans or animals.

Added by Acts 2013, 83rd Leg., R.S., Ch. 16 (S.B. 186), Sec. 1, eff. May 10, 2013.

**SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER**

Sec. 341.031. PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

(b) In a public place or an establishment catering to the public, a common drinking cup may not be used.

(c) Drinking water may not be served except in sanitary containers or through other sanitary mediums.

(d) In this section, "common drinking cup" means a water or other beverage receptacle used for serving more than one person. The term does not include a water or other beverage receptacle that is properly washed and sterilized after each use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 3, eff. Sept. 1, 1993; Acts

1997, 75th Leg., ch. 1010, Sec. 6.18, eff. Sept. 1, 1997.

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM REQUIREMENTS. (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:

- (1) supply safe drinking water in adequate quantities;
- (2) are financially stable; and
- (3) are technically sound.

(b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.

(c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

(d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.19, eff. Sept. 1, 1997.

Sec. 341.032. DRINKING WATER PROVIDED BY COMMON CARRIER. (a) Drinking water provided by a common carrier or the common carrier's agent shall be taken only from supplies certified as meeting the standards established by the commission. The drinking water shall be kept and dispensed in a sanitary manner.

(b) A watering point must meet the standards of sanitation and water-handling practices established for those purposes by the commission. The commission shall certify each watering point that meets those standards.

(c) If a sanitary defect exists at the watering point, the commission shall issue a supplemental certification showing that the watering point is only provisionally approved. If a sanitary defect continues after the expiration of a reasonable time provided to correct the defect, the commission shall notify the common carrier not to receive drinking water at the watering point involved.

(d) In this section:

- (1) "Common carrier" means a licensed firm, corporation, or

establishment that solicits and operates public freight or passenger transportation service, including a vehicle employed in that transportation service.

(2) "Watering point" means a place where drinking water is placed aboard a vehicle operated as a common carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.12, eff. Sept. 1, 1995.

Sec. 341.033. PROTECTION OF PUBLIC WATER SUPPLIES. (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code.

(b) An owner, agent, manager, operator, or other person in charge of a water supply system that furnishes water for public or private use may not knowingly furnish contaminated drinking water to a person or allow the appliances of the water supply system to become unsanitary.

(c) The owner or manager of a water supply system furnishing drinking water to at least 25,000 persons shall have the water tested at least once daily to determine its sanitary quality and shall submit monthly reports of the tests to the commission.

(d) The owner or manager of a water supply system furnishing drinking water to less than 25,000 persons shall submit to the commission during each monthly period of the system's operation at least one specimen of water taken from the supply for bacteriological analysis. The population under this subsection shall be determined according to the most recent federal census or other population-determining methods if a federal census is not taken for the area served by the water supply system.

(e) The distribution system of a public drinking water supply and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the commission approves the connection.

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of



sewage or contaminated water into the drinking water supply.

(g) On discovery of a connection in violation of Subsection (e) or (f), the local health authority shall give written notice to the owner or agent maintaining the condition. The owner or agent shall make the necessary corrections to eliminate the condition.

(h) Subsections (a)-(d) do not apply to the production, distribution, or sale of raw, untreated surface water.

(i) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes water for public or private use or a wastewater system that provides wastewater services for public or private use shall maintain internal procedures to notify the commission immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water supply or wastewater system;

(2) an act of terrorism against the public water supply or wastewater system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water supply or wastewater system;

(4) a theft of property that supports the key activities of the public water supply or wastewater system; or

(5) a natural disaster, accident, or act that results in damage to the public water supply or wastewater system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.13, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 18, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 18, eff. June 18, 2005.

Sec. 341.034. LICENSING AND REGISTRATION OF PERSONS WHO PERFORM DUTIES RELATING TO PUBLIC WATER SUPPLIES. (a) A person who operates a public water supply on a contract basis must hold a registration issued by the commission under Chapter 37, Water Code.

(b) A person who performs process control duties in production or distribution of drinking water for a public water system must hold

a license issued by the commission under Chapter 37, Water Code, unless:

(1) the duties are provided to a transient, noncommunity water system; and

(2) the water system uses groundwater that is not under the influence of surface water.

(c) A person who repairs or tests the installation or operation of backflow prevention assemblies must hold a license issued by the commission under Chapter 37, Water Code.

(d) A person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

(e) Unless the person is licensed by the Texas State Board of Plumbing Examiners, a person must hold a license issued by the commission under Chapter 37, Water Code, if, under a contract, the person:

(1) installs, exchanges, connects, maintains, or services potable water treatment equipment and appliances in public or private water systems; or

(2) analyzes water to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacterial content or substance as part of the complete installation, exchange, connection, maintenance, or service of potable water treatment equipment and appliances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 19, eff. Sept. 1, 2001.

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES. (a) Except as provided by Subsection (d), a person may not begin construction of a public drinking water supply system unless the executive director of the commission approves:

(1) a business plan for the system; and

(2) the plans and specifications for the system.

(b) The prospective owner or operator of the system must submit to the executive director a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director:

(1) shall review the business plan; and

(2) may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

(c) The prospective owner or operator of the proposed system shall provide to the commission completed plans and specifications for review and approval in accordance with commission rules.

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

(1) is a county;

(2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0351. NOTIFICATION OF SYSTEM CHANGES. Any person, including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the commission before

making the change.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(b) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0352. ADVERTISED QUALITY OF WATER SUPPLY. A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the commission's latest rating.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(c) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0353. DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. The commission shall assemble and tabulate all necessary information relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The information forms the basis of an official comparative rating of public drinking water supply systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(d) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0354. HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. A water supply system that attains an approved rating is entitled to erect signs of a design approved by the commission on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the

commission if the water supply system does not continue to meet the specified standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(e) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS. (a) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Section 341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) provide the executive director of the commission with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules; and

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules in the form of a bond or as specified by the commission.

(b) If the commission relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account and released only with the approval of the commission.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0356. ORDER TO STOP OPERATIONS. (a) A public water supply system shall stop operations on receipt of a written notification of the executive director of the commission or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) the system was constructed without the approval required by Section 341.035; or

(2) the executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR DEVICE WITH APPEARANCE OF FIRE HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY. (a) The owner of any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located shall paint the device black if the device is nonfunctioning or otherwise unavailable for use by the entity providing fire suppression services in a fire emergency. The owner may place a black tarp over the device instead of painting the device black as required under this section if the device is temporarily nonfunctioning, or temporarily unavailable for use in a fire emergency, for a period not to exceed seven days.

(b) For purposes of this section, a device is considered to be nonfunctioning if the device pumps less than 250 gallons of water per minute.

(c) This section does not apply within the jurisdiction of a governmental entity that maintains its own system for labeling a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency.

(d) This section does not apply within the jurisdiction of a governmental entity described by Section 341.03571(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 684 (H.B. 1717), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. 1768), Sec. 1, eff. June 14, 2013.

Sec. 341.03571. IDENTIFICATION REQUIREMENT FOR CERTAIN FIRE HYDRANTS AND FLUSH VALVES IN CERTAIN MUNICIPALITIES. (a) In this section, "hydrant" means:

(1) a fire hydrant; or

(2) a metal flush valve that:

(A) has the appearance of a fire hydrant; and

(B) is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located.

(b) This section applies only to a county, or a municipality in a county, that:

(1) borders the United Mexican States or is adjacent to a county that borders the United Mexican States;

(2) has a population of at least 400,000 or has a population of at least 20,000 and is adjacent to a county that has a population of at least 400,000; and

(3) is within 200 miles of the Gulf of Mexico.

(c) Each public water system responsible for any hydrant shall:

(1) paint all or the cap of the hydrant white if the hydrant is available to be used only to fill a water tank on a fire truck used for fire suppression services; and

(2) paint all or the cap of the hydrant black if the hydrant is unavailable for use by the entity providing fire suppression services in a fire emergency.

(d) For purposes of Subsection (c)(2), a hydrant is unavailable for use in a fire emergency if it is unavailable for pumping directly from the hydrant or is unavailable for use in filling a water tank on a fire truck used for fire suppression services.

(e) A public water system may place a black tarp over the hydrant or use another means to conceal the hydrant instead of painting all or the cap of the hydrant black as required under Subsection (c)(2) if the hydrant is temporarily unavailable for use in a fire emergency for a period not to exceed 45 days. Not later than the 45th day after the date a hydrant is concealed as provided by this subsection, the public water system responsible for the hydrant shall:

(1) if the hydrant is available for the provision of fire suppression services, remove the tarp or other means of concealment; or

(2) if the hydrant continues to be unavailable for use in a fire emergency, paint all or the cap of the hydrant black as required by Subsection (c)(2).

(f) A public water system that paints all or the cap of a hydrant black as required by Subsection (c)(2) may also ensure by any reasonable means that the hydrant is identifiable in low-light conditions, including by installing reflectors.

(g) This section does not apply:

(1) within the jurisdiction of a governmental entity that maintains its own system for labeling or color coding its hydrants; or

(2) to any public water system that has entered into a contract with a municipality or volunteer fire department to provide a water supply for fire suppression services if the contract specifies a different system for labeling or color coding hydrants.

(h) For purposes of Subsection (g), a system for labeling or color coding hydrants may include the assignment of different colors to identify hydrants that are available for direct pumping, hydrants that are available for filling a water tank on a fire truck used for fire suppression services, and hydrants that are unavailable for use by an entity providing fire suppression services in a fire emergency.

(i) The fact that all or the cap of a hydrant for which a public water system is responsible under this section is not painted black as described by Subsection (c)(2) or concealed in the manner described by Subsection (e) does not constitute a guarantee by the public water system that the hydrant will deliver a certain amount of water flow at all times. Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a public water system is not liable for a hydrant's inability to provide adequate water supply in a fire emergency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. [1768](#)), Sec. 2, eff. June 14, 2013.

Sec. 341.0358. PUBLIC SAFETY STANDARDS. (a) In this section:

(1) "Industrial district" has the meaning assigned by



Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(1-a) "Public utility" has the meaning assigned by Section 13.002, Water Code.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

(3) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(b) The regulatory authority for a public utility shall by rule or ordinance adopt standards for installing fire hydrants and maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of 1,000,000 or more.

(c) The commission shall assess residential areas in a municipality with a population of 1,000,000 or more to ensure that:

(1) the regulatory authority for the area has adopted the standards required by this section; and

(2) all public utilities serving the residential area are complying with the standards required by this section.

(d) The commission shall require a municipality with a population of 1,000,000 or more and acting as a regulatory authority to make appropriate revisions to standards the commission considers to be inadequate within a reasonable time established by the commission.

(e) The commission shall require a public utility in violation of a standard required under this section and established by the commission or by a municipality with a population of 1,000,000 or more and acting as a regulatory authority to comply with the standard within a reasonable time established by the commission.

(f) This section does not limit the authority of a municipality

with a population of 1,000,000 or more and acting as a regulatory authority to prohibit a public utility in violation of a standard established by the municipality from recovering through the public utility's rates a penalty or fine incurred for a violation of a standard.

(g) This section also applies to:

(1) a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million;

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(3) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. 1391), Sec. 1, eff. September 1, 2007.

Renumbered from Health and Safety Code, Section 341.0357 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(54), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 122 (H.B. 3661), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 290 (H.B. 1814), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 2, eff. September 1, 2013.

Sec. 341.03585. FIRE HYDRANT FLOW AND PRESSURE STANDARDS IN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned

industrial area.

(2) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(3) "Residential area" has the meaning assigned by Section 341.0358.

(4) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) This section applies only to:

(1) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; and

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(c) The governing body of a municipality by ordinance shall adopt standards requiring a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality or the municipality's extraterritorial jurisdiction. The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a sufficient water flow not in excess of 250 gallons per minute for at least two hours; and

(B) a sufficient water pressure not in excess of 20 pounds per square inch;

(2) must require a utility to maintain at least the sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area or an industrial district located within the municipality or the municipality's extraterritorial jurisdiction; and

(3) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility.

(d) Except as provided by this subsection, an ordinance under Subsection (c) may not require a utility to build, retrofit, or improve fire hydrants and related infrastructure in existence at the time the ordinance is adopted. An ordinance under Subsection (c) may apply to a utility's fire hydrants and related infrastructure that the utility:

- (1) installs after the effective date of the ordinance; or
- (2) acquires after the effective date of the ordinance if the hydrants and infrastructure comply with the standards adopted by the ordinance at the time the hydrants and infrastructure are acquired.

(e) After adoption of an ordinance under Subsection (c), the municipality shall encourage any responsible emergency services district, as described by Chapter 775, to enter into a written memorandum of understanding with the utility to provide for:

- (1) the necessary testing of fire hydrants; and
- (2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) After adoption of an ordinance under Subsection (c), the utility shall paint all fire hydrants in accordance with the ordinance or a memorandum of understanding under Subsection (e) that are located in a residential area or an industrial district within the municipality or the municipality's extraterritorial jurisdiction.

(g) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality or utility under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. [1086](#)), Sec. 3, eff. September 1, 2013.

Sec. 341.0359. FIRE HYDRANT FLOW STANDARDS. (a) In this section:

- (1) "Municipal utility" means a retail public utility, as

defined by Section 13.002, Water Code, that is owned by a municipality.

(2) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(3) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) The governing body of a municipality by ordinance may adopt standards set by the commission under Subsection (c) requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's extraterritorial jurisdiction.

(c) The commission by rule shall establish standards for adoption by a municipality under Subsection (b). The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 pounds per square inch;

(2) must require a utility to maintain at least the minimum sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area located within the municipality or the municipality's extraterritorial jurisdiction;

(3) must be based on the density of connections, service demands, and other relevant factors;

(4) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the commission; and

(5) if the municipality does not own a municipal utility, may not require a utility located in the municipality or the municipality's extraterritorial jurisdiction to provide a minimum sufficient water flow and pressure greater than the standard established under Subdivision (1).

(d) An ordinance under Subsection (b) may not require a utility to build, retrofit, or improve infrastructure in existence at the

time the ordinance is adopted.

(e) A municipality with a population of less than 1.9 million that adopts standards under Subsection (b) or that seeks to use a utility's water for fire suppression shall enter into a written memorandum of understanding with the utility to provide for:

(1) the necessary testing of fire hydrants; and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) A municipality may notify the commission of a utility's failure to comply with a standard adopted under Subsection (b).

(g) On receiving the notice described by Subsection (f), the commission shall require a utility in violation of a standard adopted under this section to comply within a reasonable time established by the commission. The commission may approve infrastructure improvements and make corresponding changes to the tariff or rate schedule of a utility that is a public utility as needed to permit compliance with this section.

(h) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 332 (H.B. 1973), Sec. 1, eff. September 1, 2013.

Sec. 341.036. SANITARY DEFECTS AT PUBLIC DRINKING WATER SUPPLY SYSTEMS. (a) A sanitary defect at a public drinking water supply system that obtains its water supply from underground sources shall be immediately corrected.

(b) A public drinking water supply system furnishing drinking water from underground sources may not be established in a place subject to possible pollution by floodwaters unless the system is adequately protected against flooding.

(c) Suction wells or suction pipes used in a public drinking

water supply system must be constantly protected by practical safeguards against surface and subsurface pollution.

(d) Livestock may not be permitted to enter or remain in the wellhouse enclosure of a public drinking water supply system.

(e) Public drinking water distribution lines must be constructed of impervious materials with tight joints and must be a reasonably safe distance from sewer lines.

(f) Water from a surface public drinking water supply may not be made accessible or delivered to a consumer for drinking purposes unless the water has been treated to make it safe for human consumption. Water treatment plants, including aeration, coagulation, mixing, settling, filtration, and chlorinating units, shall be of a size and type prescribed by good public health engineering practices.

(g) A clear water reservoir shall be covered and be of a type and construction that prevents the entrance of dust, insects, and surface seepage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE. The commission shall enforce state laws and take other necessary action to protect a spring, well, pond, lake, reservoir, or other stream in this state from any condition or pollution that results from sewage and that may endanger the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.038. PROTECTION OF IMPOUNDED WATER FROM DISEASE-BEARING MOSQUITOES. A person that impounds water for public use shall cooperate with the commission and local departments of health to control disease-bearing mosquitoes on the impounded area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.039. GRAYWATER STANDARDS. (a) The commission by rule

shall adopt and implement minimum standards for the use and reuse of graywater for:

- (1) irrigation and other agricultural purposes;
- (2) domestic use, to the extent consistent with Subsection (c);
- (3) commercial purposes; and
- (4) industrial purposes.

(b) The standards adopted by the commission under Subsection (a) must assure that the use of graywater is not a nuisance and does not damage the quality of surface water and groundwater in this state.

(c) The commission may not require a permit for the domestic use of less than 400 gallons of graywater each day if the graywater:

- (1) originates from a private residence;
- (2) is used by the occupants of that residence for gardening, composting, or landscaping at the residence;
- (3) is collected using a system that overflows into a sewage collection or on-site wastewater treatment and disposal system;
- (4) is stored in tanks that:
  - (A) are clearly labeled as nonpotable water;
  - (B) restrict access, especially to children; and
  - (C) eliminate habitat for mosquitoes and other vectors;
- (5) uses piping clearly identified as a nonpotable water conduit, including identification through the use of purple pipe, purple tape, or similar markings;
- (6) is generated without the formation of ponds or pools of graywater;
- (7) does not create runoff across the property lines or onto any paved surface; and
- (8) is distributed by a surface or subsurface system that does not spray into the air.

(d) Each builder is encouraged to:

- (1) install plumbing in new housing in a manner that provides the capacity to collect graywater from all allowable sources; and
- (2) design and install a subsurface graywater system around the foundation of new housing in a way that minimizes foundation movement or cracking.

(e) In this section, "graywater" means wastewater from clothes-



washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients. The term does not include wastewater:

- (1) that has come in contact with toilet waste;
- (2) from the washing of material, including diapers, soiled with human excreta; or
- (3) from sinks used for food preparation or disposal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 233, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.16, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 689, Sec. 2, eff. Sept. 1, 2003.

Sec. 341.040. DEFINITION. In this subchapter, "commission" means the Texas Commission on Environmental Quality.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.024, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.17, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. [1391](#)), Sec. 2, eff. September 1, 2007.

Sec. 341.041. FEES. (a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system. The commission may establish a schedule of fees. The amount of the fees must be sufficient to cover the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission by rule may assess penalties and interest for late payment of fees owed by persons who own, operate, or

maintain public drinking water supply systems. Penalties and interest established under this section may not exceed the rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(c) Revenues collected by the commission under this subchapter shall be deposited to the credit of the water resource management account.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 333, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure has a rainwater harvesting system and uses a public water supply for an auxiliary water source, the structure must have appropriate cross-connection safeguards.

(b-1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply. A rainwater harvesting system that meets the requirements of this subsection is considered connected to a public water supply system only for purposes of compliance with minimum water system capacity requirements as determined by commission rule.

(b-2) A person who installs and maintains rainwater harvesting systems that are connected to a public water supply system and are used for potable purposes must be licensed by the Texas State Board of Plumbing Examiners as a master plumber or journeyman plumber and hold an endorsement issued by the board as a water supply protection specialist.

(b-3) A person who intends to use a public water supply system as an auxiliary water source must give written notice of that intention to the municipality in which the rainwater harvesting

system is located or the owner or operator of the public water supply system. The public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(b-4) A municipally owned water or wastewater utility, a municipality, or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that is connected to a public water supply system and is used for potable purposes if the municipally owned water or wastewater utility, municipality, or public water supply system is in compliance with the sanitary standards for drinking water applicable to the municipally owned water or wastewater utility, municipality, or public water supply system.

(b-5) A municipality or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that uses a public water supply system or an auxiliary water source and is used for potable purposes if the municipality or the public water supply system is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or public water supply system.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply to a person:

- (1) who harvests rainwater for domestic use; and
- (2) whose property is not connected to a public drinking water supply system.

Added by Acts 2005, 79th Leg., Ch. 627 (H.B. 2430), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 11, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.28, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 349 (H.B. 3372), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1240 (S.B. 1073), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 8, eff. September 1, 2013.

Sec. 341.046. NONAPPLICABILITY OF SUBCHAPTER F. Subchapter F does not apply to this subchapter.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Sec. 341.047. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) violates a provision of Section 341.031;
- (2) violates a provision of Section 341.032(a) or (b);
- (3) violates a provision of Section 341.033(a)-(f);
- (4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c);
- (5) begins construction of a drinking water supply system without the commission's approval as required by Section 341.035(a);
- (6) violates a provision of Section 341.0351 or 341.0352;
- (7) fails to remove a sign as required by Section 341.0354;

or

- (8) violates a provision of Section 341.036.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried occurred, the subsequent offense under Subsection (a) is a Class B misdemeanor.

(d) Each day of a continuing violation is a separate offense.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.21, eff. Sept. 1, 1997.

Sec. 341.048. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than \$50 nor more than \$1,000 for each violation. Each day of a continuing violation is a separate violation.

(c) If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a municipality may institute a civil suit in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(d) The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(e) On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(f) The suit may be brought in:

- (1) Travis County;
- (2) the county in which the defendant resides; or
- (3) the county in which the violation or threat of violation occurs.

(g) In a suit under this section to enjoin a violation or threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(h) Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

- (1) the state; and
- (2) the county or municipality that first brought the suit.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.22, eff. Sept. 1,  
1997.

Sec. 341.0485. WATER UTILITY IMPROVEMENT ACCOUNT. (a) The water utility improvement account is created outside of the state treasury.

(b) A civil or administrative penalty payable to the state that is collected from a utility for a violation of this subchapter shall be deposited in the account.

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 13.4132, Water Code.

(d) Money used under Subsection (c)(1) for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under Subsection (c)(1) shall be immediately distributed equally to the current customers of the utility.

(e) Money used under Subsection (c)(2) may not be considered as invested capital of the utility for any purpose.

(f) In this section, "utility" has the meaning assigned by Section 13.002, Water Code.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.32, eff. Sept. 1,  
1997.

Sec. 341.049. ADMINISTRATIVE PENALTY. (a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than \$50 nor more than \$1,000 for each violation. Each day of a continuing violation may be considered a separate violation.

(b) In determining the amount of the penalty, the commission shall consider:

- (1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;
- (2) with respect to the alleged violator:
  - (A) the history and extent of previous violations;
  - (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
  - (C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;
  - (D) any economic benefit gained through the violation;and
  - (E) the amount necessary to deter future violation;and
- (3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) and shall consider each factor for the benefit of the commission.

(d) Not later than the 10th day after the date on which the preliminary report is issued, the executive director of the commission shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person charged may give the commission written consent to the executive director's report including the recommended penalty or may make a written request for a hearing.

(f) If the person charged with the violation consents to the penalty recommended by the executive director of the commission or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses a penalty, the commission shall give written notice of its decision to the person charged.

(g) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall consider each of the factors provided by Subsection (b).

(h) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and the commission has assessed a penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f), the commission shall file notice of its decision with the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within a 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

- (1) pay the penalty in full; or
- (2) if the person seeks judicial review of the fact of the violation, the amount of the penalty, or both:
  - (A) forward the amount of the penalty to the commission for placement in an escrow account; or
  - (B) post with the commission a supersedeas bond in a



form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) If the person charged fails to forward the money for escrow or post the bond as provided by Subsection (i), the commission or the executive director of the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (59), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.23, eff. Sept. 1, 1997.

Sec. 341.050. PENALTIES CUMULATIVE. All penalties accruing under this subchapter are cumulative of all other remedies, and a suit for recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against a person or any officer, director, agent, or employee of that person.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

#### **SUBCHAPTER D. SANITATION AND SAFETY OF FACILITIES USED BY PUBLIC**

Sec. 341.061. TOILET FACILITIES. An operator, manager, or superintendent of a public building, schoolhouse, theater, filling station, tourist court, bus station, or tavern shall provide and maintain sanitary toilet accommodations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.062. PUBLIC BUILDINGS. A public building constructed after September 4, 1945, shall incorporate the heating, ventilation, plumbing, and screening features necessary to protect the public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE

VESSEL. A person managing or operating a bus line or airline in this state, or a person operating a coastwise vessel along the shores of this state, shall maintain sanitary conditions in its equipment and at all terminals or docking points.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.064. SWIMMING POOLS AND BATHHOUSES. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool shall maintain the pool in a sanitary condition.

(b) The bacterial content of the water in a public swimming pool may not exceed the safe limits prescribed by the board's standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use.

(c) Water in a swimming pool open to the public may not show an acid reaction to a standard pH test.

(d) A public bathhouse and its surroundings shall be kept in a sanitary condition at all times.

(e) Facilities shall be provided in a public swimming pool for adequate protection of bathers against sputum contamination.

(f) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool.

(g) The construction and appliances of a public swimming pool must be such as to reduce to a practical minimum the possibility of drowning or of injury to bathers. The construction after September 4, 1945, of a public swimming pool must conform to good public health engineering practices.

(h) Bathing suits and towels furnished to bathers shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) Dressing rooms of a public swimming pool shall contain shower facilities.

(j) A comb or hairbrush used by two or more persons may not be permitted or distributed in a bathhouse of a public swimming pool.

(k) The operator or manager of a public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers.

(l) In adopting rules governing lifesaving equipment to be maintained by a public swimming pool, the board may not require a separate throwing line longer than two-thirds the maximum width of the pool.

(m) In this section, "public swimming pool" means an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes.

(n) A county or municipality may:

(1) require that the owner or operator of a public swimming pool within the jurisdiction of the county or municipality obtain a permit for operation of the pool;

(2) inspect a public swimming pool within the jurisdiction of the county or municipality for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided the following are met:

(A) the auditor for the county shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(o) A county or municipality may by order close, for the period specified in the order, a swimming pool within the jurisdiction of the county or municipality if the operation of the pool violates this section or a permitting or inspection requirement imposed by the county or municipality under Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 339, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 618, Sec. 1, eff. June 20, 2003.

Sec. 341.0645. POOL SAFETY. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool, wading pool, baby pool, hot tub, in-ground spa, water park, spray fountain, or other artificial body of water typically used for recreational

swimming, bathing, or play shall comply with pool safety standards adopted under this section.

(b) The executive commissioner of the Health and Human Services Commission shall adopt by rule pool safety standards necessary to prevent drowning. The standards must be at least as stringent as those imposed under the federal Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.).

Added by Acts 2009, 81st Leg., R.S., Ch. 828 (S.B. 1732), Sec. 1, eff. September 1, 2009.

Sec. 341.065. SCHOOL BUILDINGS AND GROUNDS. (a) A school building must be located on grounds that are well drained and maintained in a sanitary condition.

(b) A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

(c) A public school lunchroom must comply with the state food and drug rules.

(d) A public school building and its appurtenances shall be maintained in a sanitary manner.

(e) A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES.

(a) A person operating a tourist court, hotel, inn, or rooming house in this state shall:

(1) provide a safe and ample water supply for the general conduct of the tourist court, hotel, inn, or rooming house; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, and rooming house must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, or

rooming house shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, or rooming house who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, or rooming house shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, or rooming house may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, or rooming house that does not conform to this chapter is a public health nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS.

(a) A fairground, public park, or amusement center of any kind shall be maintained in a sanitary condition.

(b) Food and beverages sold in a fairground, public park, or amusement center shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.068. RESTROOM AVAILABILITY WHERE THE PUBLIC CONGREGATES. (a) Publicly and privately owned facilities where the public congregates shall be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours.

(b) The board shall adopt rules to implement Subsection (a), including a rule that in providing sufficient restrooms a ratio of not less than 2:1 women's-to-men's restrooms or other minimum standards established in consultation with the Texas State Board of Plumbing Examiners shall be maintained if the use of the restrooms is designated by gender. The rules shall apply to facilities where the public congregates and on which construction is started on or after January 1, 1994, or on which structural alterations, repairs, or improvements exceeding 50 percent of the entire facility are undertaken on or after January 1, 1994.

(c) In this section:

(1) "Facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities. The term does not include hotels, churches, restaurants, bowling centers, public or private elementary or secondary schools, or historic buildings.

(2) "Restroom" means toilet, chemical toilet, or water closet.

(d) The board may adopt rules consistent with Subsection (c)(1) to define "facilities where the public congregates."

Added by Acts 1993, 73rd Leg., ch. 624, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.069. ACCESS TO RESTROOM FACILITIES. (a) In this section:

(1) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(2) "Eligible medical condition" means Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a toilet facility.

(3) "Physician" has the meaning assigned by Section 151.002, Occupations Code.

(4) "Retail establishment" means a place of business open to the general public for the sale of goods or services.

(b) A retail establishment that has a toilet facility for its employees shall allow a customer to use the toilet facility during normal business hours if:

(1) the retail establishment does not have a public restroom that is immediately accessible to the customer;

(2) the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment;

(3) the customer requesting use of the employee toilet facility provides the retail establishment with evidence of the customer's eligible medical condition including:

(A) a copy of a statement signed by a physician, a registered nurse, a physician's assistant, or a person acting under the delegation and supervision of a licensed physician in conformance with Subchapter A, Chapter 157, Occupations Code, that indicates the customer suffers from an eligible medical condition or uses an ostomy device; or

(B) an identification card that is issued by a nationally recognized health organization or a local health department and that indicates the customer suffers from an eligible medical condition or uses an ostomy device; and

(4) three or more employees of the retail establishment are working and physically present on the premises of the retail establishment at the time the customer requests to use the employee toilet facility.

(c) A customer who uses a toilet facility as authorized by this section shall leave the toilet facility in the same condition as it was before the customer used the toilet facility.

(d) In providing access to an employee toilet facility under this section, the retail establishment or employee does not owe the customer to whom access is provided a greater degree of care than is owed to a licensee on the premises.

(e) An employee of a retail establishment who refuses to provide a customer with access to an employee toilet facility as required by this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$100.

(f) A retail establishment is not required to make any physical changes to an employee toilet facility under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 613 (H.B. 416), Sec. 2, eff. September 1, 2007.

Sec. 341.0695. INTERACTIVE WATER FEATURES AND FOUNTAINS. (a) In this section, "interactive water feature or fountain" means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation.

(b) An owner, manager, operator, or other attendant in charge of an interactive water feature or fountain shall maintain the water feature or fountain in a sanitary condition.

(c) The bacterial content of the water in an interactive water feature or fountain may not exceed the safe limits prescribed by the standards adopted under this chapter.

(d) Except as provided by Subsection (f), a minimum free residual chlorine of 1.0 part for each one million units of water used in an interactive water feature or fountain must be maintained.

(e) Water in an interactive water feature or fountain may not show an acid reaction to a standard pH test.

(f) The department may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.

(g) An interactive water feature or fountain that is supplied entirely by drinking water that is not recirculated is not subject to Subsections (d) and (e).

(h) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from an interactive water feature or fountain.

(i) A county, a municipality, or the department may:

(1) require that the owner or operator of an interactive water feature or fountain obtain a permit for operation of the water feature or fountain;

(2) inspect an interactive water feature or fountain for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided, if the requirement is imposed by a county or municipality, the following are met:

(A) the auditor for the county or municipality shall



review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county or municipality refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(j) A county, a municipality, or the department may by order close, for the period specified in the order, an interactive water feature or fountain if the operation of the fountain or water feature violates this section or a permitting or inspection requirement imposed under Subsection (i).

(k) This section does not apply to a recreational water park that uses freshwater originating from a natural watercourse for recreational purposes and releases the freshwater back into the same natural watercourse.

Added by Acts 2009, 81st Leg., R.S., Ch. 1375 (S.B. 968), Sec. 1, eff. June 19, 2009.

#### **SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES**

Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED. This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

- (1) more stringent ordinances in matters relating to this chapter; or
- (2) an ordinance under:
  - (A) Article XI, Section V, of the Texas Constitution;
  - (B) Article 1175, Revised Statutes; or
  - (C) Section 51.072, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES. (a) In a home-rule municipality, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the board.

(c) The environmental health officer shall assist the board in enforcing this chapter and is subject to:

- (1) the authority of the board; and
- (2) removal from office in the same manner as a municipal health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 76, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 742, Sec. 1, eff. June 17, 1997.

#### **SUBCHAPTER F. PENALTIES**

Sec. 341.091. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 618, Sec. 2, eff. June 20, 2003.

Sec. 341.092. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o) shall be assessed a civil penalty. A civil penalty under this section may not be less than \$10 or more than \$200 for each violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the

defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than \$10 or more than \$1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the department, a county, a municipality, or the attorney general on request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality through its own attorney shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

(j) The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 618, Sec. 3, eff. June 20, 2003.

**CHAPTER 342. LOCAL REGULATION OF SANITATION**  
**SUBCHAPTER A. MUNICIPAL REGULATION OF SANITATION**

Sec. 342.001. MUNICIPAL POWER CONCERNING STAGNANT WATER AND OTHER UNSANITARY CONDITIONS. (a) The governing body of a municipality may require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease.

(b) The governing body of a municipality may require the inspection of all premises.

(c) The governing body of a municipality may impose fines on the owner of premises on which stagnant water is found.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.002. MUNICIPAL POWER CONCERNING SEWERS AND PRIVIES. The governing body of a municipality may:

(1) regulate the making, filling, altering, or repairing of sewers and privies;

(2) direct the mode and material for constructing sewers and privies; and

(3) regulate the cleaning and disinfecting of sewers and privies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.003. MUNICIPAL POWER CONCERNING FILTH, CARRION, AND OTHER UNWHOLESOME MATTER. The governing body of a municipality may regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.004. MUNICIPAL POWER CONCERNING WEEDS OR CERTAIN

PUBLIC NUISANCES. The governing body of a municipality may require the owner of real property in the municipality to keep the property free from weeds, brush, and a condition constituting a public nuisance as defined by Section 343.011(c)(1), (2), or (3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 580 (S.B. 837), Sec. 1, eff. June 14, 2013.

Sec. 342.005. VIOLATION OF ORDINANCE. The governing body of a municipality may punish an owner or occupant of property in the municipality who violates an ordinance adopted under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.006. WORK OR IMPROVEMENTS BY MUNICIPALITY; NOTICE.

(a) If the owner of property in the municipality does not comply with a municipal ordinance or requirement under this chapter within seven days of notice of a violation, the municipality may:

(1) do the work or make the improvements required; and

(2) pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

(1) personally to the owner in writing;

(2) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) if personal service cannot be obtained:

(A) by publication at least once;

(B) by posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) If a municipality mails a notice to a property owner in accordance with Subsection (b), and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(d) In a notice provided under this section, a municipality may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the municipality has not been informed in writing by the owner of an ownership change, then the municipality without notice may take any action permitted by Subsections (a)(1) and (2) and assess its expenses as provided by Section 342.007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 252, Sec. 1, eff. June 5, 1991; Acts 1993, 73rd Leg., ch. 921, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 209, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 413, Sec. 2, eff. Sept. 1, 2001.

Sec. 342.007. ASSESSMENT OF EXPENSES; LIEN. (a) The governing body of a municipality may assess expenses incurred under Section 342.006 against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the mayor, municipal health authority, or municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the municipality is located. The lien statement must state the name of the owner, if known, and the legal description of the property. A signature on a lien statement may be a facsimile signature as defined by Section 618.002, Government Code. The lien attaches upon the filing of the lien statement with the county clerk.

(c) The lien obtained by the municipality's governing body is security for the expenditures made and interest accruing at the rate of 10 percent on the amount due from the date of payment by the municipality.

(d) The lien is inferior only to:

- (1) tax liens; and
- (2) liens for street improvements.

(e) The governing body of the municipality may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the municipality in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to the remedy provided by Section 342.005.

(h) The governing body of a municipality may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 921, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1017, Sec. 4, eff. Aug. 28, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1226 (S.B. 577), Sec. 2, eff. June 17, 2011.

Sec. 342.008. ADDITIONAL AUTHORITY TO ABATE DANGEROUS WEEDS.

(a) A municipality may abate, without notice, weeds that:

- (1) have grown higher than 48 inches; and
- (2) are an immediate danger to the health, life, or safety

of any person.

(b) Not later than the 10th day after the date the municipality abates weeds under this section, the municipality shall give notice to the property owner in the manner required by Section 342.006.

(c) The notice shall contain:

(1) an identification, which is not required to be a legal description, of the property;

(2) a description of the violations of the ordinance that occurred on the property;

(3) a statement that the municipality abated the weeds;

and

(4) an explanation of the property owner's right to request an administrative hearing about the municipality's abatement of the weeds.

(d) The municipality shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30th

day after the date of the abatement of the weeds, the property owner files with the municipality a written request for a hearing.

(e) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the municipality's abatement of the weeds.

(f) A municipality may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 342.007. A lien created under this section is subject to the same conditions as a lien created under Section 342.007.

(g) The authority granted a municipality by this section is in addition to the authority granted by Section 342.006.

Added by Acts 1995, 74th Leg., ch. 359, Sec. 3, eff. Aug. 28, 1995.

**SUBCHAPTER B. REGULATION OF SANITATION BY CERTAIN TYPES OF  
MUNICIPALITIES**

Sec. 342.021. POWER OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING CARCASSES OR OTHER UNWHOLESOME MATTER. (a) The governing body of a Type A general-law municipality may:

(1) prevent a person from bringing, depositing, or having in the municipal limits a carcass or other offensive or unwholesome substance or matter; and

(2) require a person to remove or destroy any offensive or unwholesome substance or matter, filth, putrid or unsound beef, pork, or fish, or hides or skins of any kind that the person is responsible for placing in the municipality.

(b) If the person does not comply with a provision adopted under Subsection (a), the municipality's governing body may:

(1) authorize a municipal officer to remove or destroy the offending material; or

(2) require the owner of a dead animal to remove the dead animal to a place designated by the municipality's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.022. JOINT SANITARY REGULATIONS OF TYPE A GENERAL-LAW MUNICIPALITY AND COUNTY. The governing body of a Type A general-law



municipality may cooperate with the commissioner's court of the county in which the municipality is located in making improvements considered necessary by those entities to:

- (1) improve the public health and promote efficient sanitary regulations; and
- (2) arrange for the construction of and payment for those improvements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 343.002. DEFINITIONS. In this chapter:

- (1) "Abate" means to eliminate or remedy:
  - (A) by removal, repair, rehabilitation, or demolition;
  - (B) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and
  - (C) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.
- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) "Neighborhood" means:
  - (A) a platted subdivision; or
  - (B) property contiguous to and within 300 feet of a platted subdivision.
- (5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or

other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 2, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.004, eff. September 1, 2009.

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED**

Sec. 343.011. PUBLIC NUISANCE. (a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched and locked gate; and

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(8) maintaining a flea market in a manner that constitutes

a fire hazard;

(9) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;

(10) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement;

(11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

(12) discarding refuse on property that is not authorized for that activity; or

(13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

(e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 2, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 523, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 355 (S.B. [1238](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. [2120](#)), Sec. 12, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.005, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 1, eff. September 1, 2013.

Sec. 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION. (a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, Sec. 3, eff. Aug. 28, 1995.

Amended by Acts 1999, 76th Leg., ch. 752, Sec. 2, eff. Sept. 1, 1999.

Sec. 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 3, eff. Sept. 1, 1999.

Sec. 343.013. INJUNCTION. (a) A county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a

nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 3, eff. June 15, 2007.

#### **SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE**

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. (a) If a county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter, the county may abate a nuisance under this chapter:

(1) by demolition or removal, except as provided by Subsection (b);

(2) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;

(3) in the case of a nuisance under Section 343.011(c)(6), by:

(A) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or

(B) draining and filling the swimming pool; or

(4) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361.

(b) In the case of a nuisance under Section 343.011(c)(13), the

county may use any means of abatement reasonably necessary to bring the system into compliance with Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court under Section 343.012(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 4, eff. June 15, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.006, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 2, eff. September 1, 2013.

Sec. 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

- (1) the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (6), (9), or (10);
- (2) the removal or demolition of the nuisance; and
- (3) the abatement of a nuisance described by Section 343.011(c)(12).

(b) The abatement procedures must require that written notice be given to:

- (1) the owner, lessee, occupant, agent, or person in charge of the premises; and
- (2) the person responsible for causing a public nuisance on the premises when:
  - (A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and
  - (B) the person responsible can be identified.

(c) The notice must state:

- (1) the specific condition that constitutes a nuisance;



(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and

(5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) Except as provided in Subsection (f), the abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

(f) A county may, before conducting a hearing, abate a nuisance under Section 343.011(c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (e) after the nuisance is abated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 123, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 5, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.007, eff. September 1, 2009.

Sec. 343.023. ASSESSMENT OF COSTS; LIEN. (a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the

property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 5, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 6, eff. Aug. 28, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 6, eff. June 15, 2007.

Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Section 343.011(c)(1), (9), or (10).

Added by Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 5, eff. June 15, 2007.

Sec. 343.024. AUTHORITY TO ENTER PREMISES. (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect,

investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 6, eff. Sept. 1, 1991.

Sec. 343.025. ENFORCEMENT. A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 344. MOSQUITO CONTROL DISTRICTS**

Sec. 344.001. ELECTION ON ESTABLISHMENT AND TAX LEVY. The county judge on being petitioned by at least 200 qualified voters of the county may order an election to determine if the qualified voters of the county desire the:

(1) establishment of a mosquito control district in all or a portion of the county for the purpose of eradicating mosquitoes in the area; and

(2) levy of a tax not to exceed 25 cents on each \$100 of the taxable value of property taxable by the district to finance the program provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.002. BALLOT PROPOSITIONS. The ballot for an election under this chapter shall be printed to provide for voting for or against the propositions:

(1) "The establishment of a mosquito control district in \_\_\_\_\_ County."; and

(2) "The levy of a tax of \_\_\_\_\_ cents on each \$100 of the taxable value of property taxable by the district to finance the mosquito control district within \_\_\_\_\_ County."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.003. LEVY AND COLLECTION OF TAX. (a) If the election results are in favor of the establishment of a mosquito control district and the levy of a tax, the commissioners court may levy a tax not to exceed the amount fixed by the election.

(b) The commissioners court may lower the tax to any designated sum it may determine if the anticipated revenue exceeds the revenue needed to carry out this chapter.

(c) The taxes levied under this section shall be:

- (1) collected by the county tax assessor-collector;
- (2) deposited in a separate fund; and
- (3) used only to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.004. ADVISORY COMMISSION. (a) The commissioners court in each county in which a mosquito control district is established shall appoint an advisory commission composed of five members who are qualified property taxpaying voters of the county. The commissioners of the commissioners court and the county judge shall each appoint one member of the advisory commission.

(b) Members of the advisory commission serve without compensation.

(c) The advisory commission shall make recommendations to the commissioners court that it considers necessary to carry out this chapter and shall perform any other duties as the commissioners court may determine.

(d) Each advisory commission member must take an oath of office prescribed by the commissioners court. The commissioners court may remove any member of the advisory commission at any time it considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.005. MOSQUITO CONTROL ENGINEER. (a) The commissioners court in each county that has established a mosquito control district may appoint a mosquito control engineer who must be well qualified in the field of mosquito control. The mosquito control engineer serves at a salary determined by the commissioners court.

(b) The commissioners court shall supervise the powers and duties of the engineer.

(c) The engineer shall make recommendations to the commissioners court relating to the number of assistants and employees that may be needed, and the commissioners court shall appoint the assistants and employees it considers necessary for mosquito eradication in the district.

(d) The engineer shall make semiannual reports to the commissioners court or as many reports as are requested by the court concerning the work of mosquito eradication and of the expenses needed for the ensuing year.

(e) The first report shall be made not later than June 30 following the establishment of the mosquito control district, and the second report shall be made not later than December 31 following the first report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.006. MERGER OF DISTRICTS. (a) The commissioners courts of two or more counties operating under this chapter may enter into an agreement to merge their separate districts into a single mosquito control district composed of those counties.

(b) The commissioners courts shall enter into an agreement that complies with this chapter, except that the advisory commission and mosquito control engineer may be appointed for the entire district rather than for each county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.007. ELECTION ON DISSOLUTION OF DISTRICT. Each commissioners court that has established a mosquito control district under this chapter shall order an election to dissolve the mosquito control district on a petition of not less than 10 percent of the qualified voters of the county, as determined by the number of votes cast for all candidates for governor in the most recent gubernatorial general election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 345. BEDDING****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 345.001. DEFINITIONS. In this chapter:

(1) "Bedding" means a mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chairbed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

(2) "Department" means the Texas Department of Health.

(2-a) "Floor model" means new bedding placed in a retail sales area for display purposes.

(3) "Manufacturer" means a person whose principal business is the manufacture of bedding from new materials for the purpose of resale in this state by a distributor, jobber, wholesaler, or retail outlet or subsidiary outlet if the ownership and the name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(4) "Material" means an article, substance, or part of an article or substance, used in the manufacture, repair, or renovation of bedding.

(5) "New" means no previous use for any purpose other than previous use as a floor model.

(6) "Processor" means a person who manufactures, processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than wooden frames or metal springs.

(7) "Recycled material" means material that:

(A) is composed of recyclable material or that is derived from postconsumer waste or industrial waste; and

(B) may be used in place of raw or virgin filling material in manufacturing, repairing, or renovating bedding.

(8) "Renovate" means to restore to a former condition or to place in a good state of repair.

(9) "Secondhand" means previous use in any manner other than previous use as a floor model.

(10) "Sell" includes offering or exposing for sale, including in a sale, bartering, trading, delivering, consigning,

leasing, possessing with intent to sell, or disposing of in any commercial manner.

(11) "Wholesaler" means a person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or filling material to be used in bedding. The term does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 723 (H.B. 2471), Sec. 1, eff. September 1, 2007.

Sec. 345.002. EVIDENCE OF INTENT TO SELL. The possession of bedding by a manufacturer, renovator, wholesaler, or person holding a germicidal treatment permit in the course of business is presumptive evidence of an intent to sell the bedding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.003. PAYMENT TO DEPARTMENT. Money collected in the administration of this chapter is payable to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 2, eff. Sept. 1, 1997.

Sec. 345.004. LIMIT ON EXPENDITURE OF MONEY. The expenditure of money under this chapter may not exceed the amount of money collected under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.005. MATERIALS OBTAINED FROM DUMP OR JUNKYARD. (a) A person may not manufacture, repair, or renovate bedding or batting



using discarded materials obtained from any dump or junkyard.

(b) A person may not sell an item of discarded bedding obtained from a source set out in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.0055. MATERIAL USED IN BEDDING. (a) The department may adopt rules relating to material used in new or renovated bedding, including rules:

(1) requiring the use of burn resistant material; and  
(2) prohibiting or restricting the use of secondhand or recycled material.

(b) Rules adopted under this section must be consistent with any applicable federal law or regulation.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 3, eff. Sept. 1, 1997.

Sec. 345.006. APPLICABILITY OF CHAPTER. This chapter does not apply to bedding manufactured, repaired, or renovated before June 30, 1939.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.0065. APPLICABILITY OF CHAPTER TO FLOOR MODEL. Bedding that has not been used for a purpose other than as a floor model is regulated as new bedding. A floor model may not be regulated as secondhand bedding under this chapter in any manner.

Added by Acts 2007, 80th Leg., R.S., Ch. 723 (H.B. [2471](#)), Sec. 2, eff. September 1, 2007.

Sec. 345.007. ADVISORY COMMISSION. The Texas Board of Health may appoint an advisory commission composed of representatives of consumers and the bedding industry to assist the board in implementing this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 3, eff. Sept. 1, 1997.

**SUBCHAPTER B. LABELS**

Sec. 345.021. LABEL REQUIRED. (a) A person may not manufacture, repair, renovate, or sell bedding unless a label that conforms to this subchapter is:

(1) securely attached to the bedding at the location and by a method approved by the department; and

(2) clearly visible.

(b) The label must be made of substantial cloth or a substance of equal quality.

(c) The information required on a label by this chapter must be in English. The department may authorize or require the use of a language in addition to English on the label or on an additional separate label.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.022. LABELS ON BEDDING MADE OF NEW OR SECONDHAND MATERIAL. (a) A label required under this section shall be attached at the factory in which the bedding is manufactured.

(b) A label attached to bedding wholly manufactured from new material must be at least six square inches and state, plainly stamped or printed in ink:

(1) "All New Material" in lettering at least one-eighth inch high;

(2) the kind and grade of each material used in the filling and, if more than one kind or grade of material is used, the percentage, in descending order, by weight of each material; and

(3) the manufacturer's permit number assigned by the department.

(c) A label attached to bedding any part of which is manufactured from secondhand or recycled material, other than bedding reworked, repaired, or renovated for the owner for the owner's personal use, must be at least 12 square inches and state, plainly stamped or printed in ink:

(1) "Secondhand or Recycled Material" in lettering at least one-fourth inch high; and

(2) the manufacturer's permit number assigned by the department.

(d) A label attached to bedding renovated, reworked, or repaired for the owner for the owner's personal use and from the owner's material that is in whole or in part secondhand must be at least six square inches and state, plainly stamped or printed in ink:

(1) "Not for Sale, Owner's Own Material which is Secondhand Material" in lettering at least one-eighth inch high;

(2) the name and address of the owner; and

(3) the manufacturer's permit number assigned by the department.

(e) A term used on a label required by this section to describe kinds and grades of material used in filling must conform to those defined in the department's rules, and a trade or substitute term may not be used.

(f) The department may adopt rules that:

(1) require that the label state conformity with burn resistant material requirements or identify any chemical treatment applied to the bedding; and

(2) exempt from the requirements of this section a custom upholstery business that does not repair or renovate bedding for resale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.023. FALSE OR MISLEADING STATEMENT PROHIBITED. A person may not make a false or misleading statement on a label required by Section 345.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.024. GERMICIDAL TREATMENT OF BEDDING AND MATERIALS.

(a) Except as provided by Subsection (b), a person may not sell secondhand bedding or bedding manufactured in whole or in part from secondhand or recycled material unless the bedding has been germicidally treated and cleaned by a method approved by the department.

(b) An upholstered sofa bed, reclining chair, or studio couch shall be germicidally treated and cleaned only when required by department rules.

(c) A person may not use in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidally treated by a process or treatment approved by the department if the material:

(1) has been used by a person with a communicable disease;  
or

(2) is filthy, oily, stained, or harbors loathsome insects or pathogenic organisms.

(d) A person may not sell material or bedding requiring germicidal treatment under this section unless the person applying the germicidal treatment securely attaches by a method approved by the department a label that is at least 12 square inches and contains, plainly printed in ink:

(1) a statement that the article or material has been germicidally treated by a method approved by the department;

(2) a statement of the method of germicidal treatment applied;

(3) the date the article was germicidally treated;

(4) the name and address of the person for whom the article was germicidally treated; and

(5) the permit number of the person applying the germicidal treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.025. LABEL REQUIRED ON FILLING MATERIAL. A processor shall identify each item of material to be used for filling bedding by affixing to the filling material a label as required by department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.026. REMOVAL, DEFACEMENT, OR ALTERATION. A person may not remove, deface, or alter, or cause the removal, defacing, or

alteration of, a label or a statement on the label to defeat a provision of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.027. COLOR OF LABEL AND LETTERING. The department may adopt rules governing the color of label required under this subchapter and the color of the lettering on the label.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.028. APPLICATION TO RECYCLED MATERIAL. Notwithstanding any other provision of this subchapter, this subchapter applies to bedding manufactured, repaired, or renovated in whole or in part from recycled materials only to the extent required by department rules.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

#### **SUBCHAPTER C. PERMITS**

Sec. 345.041. PERMITS. (a) A person may not manufacture, wholesale, or engage in the business of renovating or selling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department.

(b) A processor may not sell filling material used for filling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department.

(c) The Texas Board of Health by rule may exempt from the permit requirement of this section a custom upholstery business that does not repair or renovate bedding for resale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 5, eff. Sept. 1, 1997.

Sec. 345.042. PERMIT TO APPLY GERMICIDAL TREATMENT. (a) A

person may not apply a germicidal process unless:

(1) the process has been registered with and approved by the department; and

(2) the person has a numbered germicidal treatment permit issued by the department.

(b) A permit may be renewed annually only after the permit holder submits proof of continued compliance with this chapter and department rules adopted under this chapter.

(c) A person who holds a permit shall keep the permit conspicuously posted on the premises of the person's business near the treatment device.

(d) A person who holds a permit shall keep an accurate record of all materials that have been germicidally treated. The record must include the:

(1) source of the material;

(2) date of treatment; and

(3) name and address of the owner of each item.

(e) The record shall be available for inspection at any time by a representative of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.043. FEES; EXPIRATION. (a) The Texas Board of Health shall set the fees for an initial permit issued under this chapter and for renewal of a permit issued under this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited to a special account in the state treasury. Money in the account may be appropriated only to the department to administer and enforce this chapter.

(c) A permit expires one year after the date of issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 6, eff. Sept. 1, 1997.

Sec. 345.0435. ADOPTION OF RULES; MINIMUM STANDARDS. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this subchapter, including

requirements for the issuance, renewal, denial, suspension, and revocation of a permit issued under this subchapter.

(b) The rules must contain minimum standards to protect the health and safety of the public.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 153 (H.B. 1752), Sec. 1, eff. September 1, 2005.

Sec. 345.0436. SUBMISSION OF PRODUCT TEST RESULTS OR SAMPLE.

In conjunction with the issuance or renewal of a permit under this subchapter, the department may require the applicant or permit holder to submit:

- (1) a product sample; or
- (2) the results of tests conducted on the product as required by the department.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 7, eff. Sept. 1, 1997.

Sec. 345.044. REVOCATION OF PERMIT FOR UNSANITARY CONDITION.

(a) A bedding manufacturer or renovator shall keep the manufacturer's or renovator's place of business in a sanitary condition satisfactory to the department.

(b) The department may revoke the permit of a bedding manufacturer or renovator who violates this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.045. MINIMUM SANITARY STANDARDS FOR GERMICIDAL TREATMENT PERMIT. (a) The holder of a germicidal treatment permit must maintain the permit holder's place of business in a sanitary condition free from refuse, dirt contamination, insects, and vermin.

(b) The executive commissioner of the Health and Human Services Commission, by rule, may establish additional requirements regulating the sanitary condition of a permit holder's place of business. The holder of a germicidal treatment permit who germicidally treats not more than 10 items at the permit holder's place of business each week

is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under this subsection.

Added by Acts 2005, 79th Leg., Ch. 153 (H.B. 1752), Sec. 2, eff. September 1, 2005.

**SUBCHAPTER D. GENERAL ENFORCEMENT; CRIMINAL OFFENSE**

Sec. 345.081. DUTY TO ENFORCE CHAPTER. The department shall enforce this chapter for the protection of the public health and welfare.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.082. RULEMAKING AUTHORITY. The department may adopt rules to implement and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.083. INSPECTION. (a) To determine compliance with this chapter or a rule adopted under this chapter, a representative of the department may enter a place at which:

(1) bedding is manufactured, repaired, renovated, stored, or sold;

(2) materials are prepared for use in bedding; or

(3) germicidal treatment of bedding is performed.

(b) A representative of the department may take a sample of materials for inspection and analysis.

(c) A representative of the department may hold for evidence in a case involving a violation of this chapter or a rule adopted under this chapter bedding or materials manufactured, repaired, renovated, or sold in violation of this chapter or a rule adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.084. SALE OF BEDDING OR MATERIAL PROHIBITED BY



DEPARTMENT. (a) A representative of the department may prohibit the sale of specified bedding or material that is being or could be offered for sale in violation of this chapter or a rule adopted under this chapter.

(b) The representative shall appropriately tag any bedding or materials the sale of which is prohibited.

(c) A tag under this section may not be removed and bedding or materials that are tagged under this section may not be disposed of in any manner unless:

(1) satisfactory compliance with this chapter and the rules adopted under this chapter has been shown;

(2) a representative of the department releases the bedding for sale; and

(3) a representative of the department has approved the removal or the department has directed that the tag be removed and the bedding or materials may be disposed of.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.085. JUDICIAL REVIEW. A person aggrieved by a final decision of the department is entitled to judicial review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.086. INTERFERENCE WITH DEPARTMENT REPRESENTATIVE. A person may not interfere with, obstruct, or hinder a representative of the department performing a duty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.087. PROHIBITED ACTS; CRIMINAL OFFENSE. (a) A person commits an offense if a person:

(1) manufactures, repairs, or renovates:

(A) bedding using material in violation of rules adopted under Section 345.0055;

(B) bedding or batting in violation of Section 345.005;

(C) bedding using material in violation of Section 345.024; or

- (D) bedding that does not conform to the label requirements of Subchapter B;
- (2) introduces or delivers for introduction into commerce:
- (A) bedding or batting manufactured, repaired, or renovated in violation of Section 345.005, 345.0055, or 345.024;
- (B) bedding that does not conform to the label requirements of Subchapter B; or
- (C) bedding or material the sale of which is prohibited as provided by Section 345.084;
- (3) receives in commerce:
- (A) bedding or batting manufactured, repaired, or renovated in violation of Section 345.005, 345.0055, or 345.024;
- (B) bedding that does not conform to the label requirements of Subchapter B; or
- (C) bedding or material the sale of which is prohibited as provided by Section 345.084; or
- (4) violates Section 345.041, 345.042, or any other provision of this chapter or a rule adopted under this chapter.
- (b) An offense under this section is a Class A misdemeanor.
- (c) In a criminal proceeding under Subsection (a)(1), (2), or (3), it is not necessary to prove intent, knowledge, recklessness, or criminal negligence.
- (d) It is a defense to prosecution under Subsection (a)(2) or (3) that the person acted in good faith and was not the person who manufactured, repaired, or renovated the article. This subsection does not apply unless the person furnishes, on request of the department or a local health authority, the name and address of the person from whom the article was received and copies of any documents relating to receipt of the article.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 8, eff. Sept. 1, 1997.

#### **SUBCHAPTER E. ADMINISTRATIVE PENALTY; INJUNCTION**

Sec. 345.101. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.102. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty based on the factors set forth in Section 345.101(c); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.103. HEARING; ORDER. (a) If the person notified

requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.104. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 345.103(c) to the person alleged to have committed the violation. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced

or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.105. PENALTY DEPOSITED TO STATE TREASURY. An administrative penalty collected under this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.106. INJUNCTION. (a) At the request of the commissioner of public health, the attorney general may petition the district court for a temporary restraining order to restrain a continuing violation of this chapter or a threat of a continuing violation of this chapter if the commissioner of public health finds that:

(1) a person has violated, is violating, or is threatening to violate this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition under this section and on a finding by the court that a person is violating or threatening to violate this chapter, shall grant any injunctive relief warranted by

the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.107. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's permit is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date on which the order issued by the commissioner of public health or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 345.106 or to enforce an administrative penalty assessed under this subchapter and an injunction is granted against the person or the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

#### **SUBCHAPTER F. DETENTION OR EMBARGO OF BEDDING**

Sec. 345.131. DEFINITIONS. In this subchapter:

(1) "Authorized agent" means an employee of the department who is designated by the commissioner of public health to enforce the provisions of this chapter.

(2) "Detained or embargoed bedding" means bedding that has been detained or embargoed under Section 345.132.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The commissioner of public health or an authorized agent may detain or embargo bedding under this section if the commissioner or the authorized agent finds or has probable cause to believe that the article violates this chapter or a rule or standard adopted under this chapter.

(b) The commissioner of public health or an authorized agent shall affix to detained or embargoed bedding a tag or other appropriate marking that gives notice that:

(1) the bedding violates or is suspected of violating this chapter or a rule or standard adopted under this chapter; and

(2) the bedding has been detained or embargoed.

(c) The tag or marking on detained or embargoed bedding must warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the commissioner of public health, the authorized agent, or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the commissioner of public health, the authorized agent, or a court.

(e) The commissioner of public health or an authorized agent shall remove the tag or other marking from detained or embargoed bedding if the commissioner or an authorized agent finds that the bedding does not violate this chapter or a rule or standard adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.133. REMOVAL ORDER FOR DETAINED OR EMBARGOED BEDDING.

(a) If the claimant of the detained or embargoed bedding or the claimant's agent fails or refuses to transfer the bedding to a secure place after the tag or other appropriate marking has been affixed as provided by Section 345.132, the commissioner of public health or an authorized agent may order the transfer of the bedding to one or more



secure storage areas to prevent unauthorized use, removal, or disposal.

(b) The commissioner of public health or an authorized agent may provide for the transfer of the bedding if the claimant of the bedding or the claimant's agent does not carry out the transfer order in a timely manner.

(c) The claimant of the bedding or the claimant's agent shall pay the costs of the transfer, and the costs of any transfer made under Subsection (a) or (b) shall be assessed against the claimant of the bedding or the claimant's agent.

(d) The commissioner of public health may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.134. CONDEMNATION. An action for the condemnation of bedding may be brought before a court in whose jurisdiction the bedding is located, detained, or embargoed if the bedding violates this chapter or a rule or standard adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.135. RECALL ORDERS. (a) In conjunction with the detention or embargo of bedding under this subchapter, the commissioner of public health may order bedding to be recalled from commerce.

(b) The commissioner of public health's recall order may require the bedding to be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner of public health.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 345.132(b).

(e) The recall order is effective until the order:

(1) expires on its own terms;  
(2) is withdrawn by the commissioner of public health; or  
(3) is reversed by a court in an order denying condemnation under Section 345.134.

(f) The claimant of the bedding or the claimant's agent shall pay the costs of the removal and storage of the bedding removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner of public health may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) The commissioner of public health may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.136. DESTRUCTION OF BEDDING. (a) A court shall order the destruction of detained or embargoed bedding if the court finds that the bedding violates this chapter or a rule or standard adopted under this chapter.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the bedding.

(c) The claimant of the article shall pay the cost of the destruction of the bedding.

(d) The court shall tax against the claimant of the bedding or the claimant's agent all court costs and fees and storage and other proper expenses.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of detained or embargoed bedding that violates this chapter or a rule or standard adopted under this chapter to the claimant of the bedding for labeling or processing under the supervision of an agent of the commissioner of public

health or an authorized agent if:

(1) the decree has been entered in the suit relating to the detained or embargoed bedding;

(2) the claimant has paid the costs, fees, and expenses of the suit;

(3) the violation can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the violation by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision of the labeling or processing by the agent of the commissioner of public health or an authorized agent.

(c) The court shall order that the bedding be returned to the claimant and the bond discharged on the representation to the court by the commissioner of public health or an authorized agent that the article no longer violates this chapter or a rule or standard adopted under this chapter and that the expenses of the supervision are paid.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

## **SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER**

### **CHAPTER 361. SOLID WASTE DISPOSAL ACT**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 361.001. SHORT TITLE. This chapter may be cited as the Solid Waste Disposal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.002. POLICY; FINDINGS. (a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed,

and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 1, eff. Sept. 6, 1990.

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(3) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(5) "Commission" means the Texas Natural Resource

Conservation Commission.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(14) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces,

smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(19) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or

adjacent or contiguous county.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

(27) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of



source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or

man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.18, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.204, eff. Sept. 1, 1997.

**SUBCHAPTER B. POWERS AND DUTIES OF TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION**

Sec. 361.011. COMMISSION'S JURISDICTION: MUNICIPAL SOLID WASTE. (a) The commission is responsible under this section for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal waste, and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to municipal solid waste management, excluding management of hazardous municipal waste, the commission shall consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects.

(e) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(1), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.02, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 28, 60(b)(1), eff. Sept. 1, 1997.

Sec. 361.013. SOLID WASTE DISPOSAL AND TRANSPORTATION FEES.

(a) Except as provided by Subsections (e) through (i), the commission shall charge a fee on all solid waste that is disposed of within this state. The fee is 94 cents per ton received for disposal at a municipal solid waste landfill if the solid waste is measured by

weight. If the solid waste is measured by volume, the fee for compacted solid waste is 30 cents per cubic yard and the fee for uncompacted solid waste is 19 cents per cubic yard received for disposal at a municipal solid waste landfill. The commission shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The commission may charge comparable fees for other means of solid waste disposal that are used.

(b) The commission may raise or lower the fees established under Subsection (a) in accordance with commission spending levels established by the legislature.

(c) The commission shall charge an annual registration fee to a transporter of municipal solid waste who is required to register with the commission under rules adopted by the commission. The commission by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than \$25 or more than \$500.

(d) The operator of each municipal solid waste facility shall maintain records and report to the commission annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the commission shall maintain records and report to the commission annually on the amount of solid waste that the transporter transports. The commission by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The commission may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

(f) The commission may not charge a fee under Subsection (a) for source separated materials that are processed at a composting and mulch processing facility, including a composting and mulch processing facility located at a permitted landfill site. The commission shall credit any fee payment due under Subsection (a) for any material received and processed to compost or mulch product at

the facility. Any compost or mulch product that is produced at a composting and mulch processing facility that is used in the operation of the facility or is disposed of in a landfill is not exempt from the fee.

(g) The commission shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.

(h) The commission may not charge a fee under Subsection (a) on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(i) The commission may not charge a fee under Subsection (a) for the disposal of:

(1) Class I industrial solid waste or hazardous waste subject to the assessment of fees under Section 361.136;

(2) an industrial solid waste for which no permit may be required under Section 361.090; or

(3) sewage sludge that:

(A) has been treated to reduce the density of pathogens to the lowest level provided by commission rules; and

(B) complies with commission rules regarding:

(i) metal concentration limits;

(ii) pathogen reduction; and

(iii) vector attraction reduction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.08, eff. Aug. 30, 1993; Acts

1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 3, eff. June 14, 2013.

Sec. 361.0135. COMPOSTING REFUND. (a) The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(b) The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.

(c) In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.

(d) The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against fees required to be collected by the facility under Section 361.013(a).

(e) In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.

(f) This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this



section.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the commission under Section 361.013 shall be deposited in the state treasury to the credit of the commission. Of that revenue, 66.7 percent is dedicated to the commission's municipal solid waste permitting programs, enforcement programs, and site remediation programs, and to pay for activities that will enhance the state's solid waste management program. The commission shall issue a biennial report to the legislature describing in detail how the money was spent. The activities to enhance the state's solid waste management program may include:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) establishment of a solid waste resource center in the commission and an office of waste minimization and recycling;

(5) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapters 391 and 683, Transportation Code;

(6) conduct of a statewide public awareness program concerning solid waste management;

(7) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) conduct of research to promote the development and

stimulation of markets for recycled waste products;

(9) creation of a state municipal solid waste superfund, from funds appropriated, for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup;

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(C) remediation, cleanup, and proper closure of unauthorized recycling sites for which a responsible party is not immediately financially able to perform the remediation, cleanup, and closure;

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments; and

(11) provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills.

(b) Of the revenue received by the commission under Section 361.013, 33.3 percent is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with this chapter and to update and maintain those plans. Those revenues shall be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. Each planning region shall issue a biennial report to the legislature detailing how the revenue is spent. A project or service funded under this subsection must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(c) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling account.

(d) Revenues allocated to the commission for the purposes authorized by Subsection (a) shall be deposited to the credit of the waste management account. Revenues allocated to local and regional

solid waste projects shall be deposited to the credit of an account in the general revenue fund known as the municipal solid waste disposal account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.10, 3.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 838, Sec. 1, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.205, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 35, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 340, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 4, eff. June 14, 2013.

Sec. 361.0145. RESPONSE TO OR REMEDIATION OF FIRE OR EMERGENCY.

(a) The commission may make an immediate response to or remediation of a fire or other emergency that involves solid waste, including processed or unprocessed material suitable for recycling or composting, as the commission determines necessary to protect the public health or safety.

(b) Notwithstanding Section 361.014(b), revenue otherwise dedicated under that section may be used for an action authorized by Subsection (a).

(c) The commission may recover from a person who is responsible for the solid waste as provided by Section 361.271 the reasonable expenses incurred by the commission during an immediate response and remediation action under Subsection (a). The state may bring an action to recover those reasonable expenses.

(d) If the commission used for an action under Subsection (a) money otherwise dedicated under Section 361.014(b), money recovered under Subsection (c) shall be deposited in the state treasury to the credit of the commission until the amount deposited equals the amount of the dedicated money used. Money credited under this subsection may be used only as provided by Section 361.014(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 1,

eff. September 1, 2007.

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The commission is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government.

(b) Except as provided by Subsection (a), the Health and Human Services Commission, acting through the Department of State Health Services or other department as designated by the executive commissioner of the Health and Human Services Commission, is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 31, eff. June 15, 2007.

Sec. 361.0151. RECYCLING. (a) The commission shall establish and administer a waste minimization and recycling office within the commission that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The commission shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 4, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.016. MEMORANDUM OF UNDERSTANDING BY COMMISSION. The commission by rule shall adopt:

(1) any memorandum of understanding between the commission and any other state agency; and

(2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.017. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE. (a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters relating to industrial solid waste and hazardous municipal waste, the commission shall:

(1) consider the public health aspects and the air pollution control and ambient air quality aspects; and

(2) consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the commission's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.03, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.23, eff. Sept. 1, 1995.

Sec. 361.018. COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of

hazardous waste components of radioactive waste under the jurisdiction of the Texas Department of Health.

(b) The commission shall consult with the Texas Department of Health concerning regulation and management under this section, except for activities solely under the commission's jurisdiction.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.019. APPROVAL OF INDUSTRIAL SOLID WASTE MANAGEMENT IN MUNICIPAL SOLID WASTE FACILITY. (a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Municipal solid waste may be accepted in an industrial solid waste facility if authorized in writing by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 5, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 703, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.04, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1993.

Sec. 361.0215. POLLUTION PREVENTION ADVISORY COMMITTEE. (a) The pollution prevention advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate

citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(d) The committee shall report quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 4, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 965, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 4.04, eff. Sept. 1, 2001.

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 5, eff. June 16, 1991.

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be



in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials, and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange. Biennially the office of waste exchange shall report to the commission on progress in implementing this section, including the plan to provide information on waste exchange, the state's participation in any national or regional waste exchange program, and information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state. The commission shall submit the report by December 1 of each even-numbered year as required by Section 5.178(b), Water Code.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.05, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

- (1) source reduction and waste minimization;
- (2) reuse or recycling of waste;
- (3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not

threaten public health, safety, or the environment; or

(4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

(1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the commission shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.27, eff. Sept. 1, 1995.

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) source reduction;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred,

but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 2, eff. Sept. 1, 1991.

Sec. 361.0231. PUBLIC POLICY CONCERNING ADEQUATE CAPACITY FOR INDUSTRIAL AND HAZARDOUS WASTE. (a) To protect the public health and environment taking into consideration the economic development of the state, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 8, eff. Sept. 6, 1990. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 361.0235. HAZARDOUS WASTE GENERATED IN FOREIGN COUNTRY.

(a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

- (1) recycling or reuse of the material; or

(2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

(1) a producer of the product or material from which the waste is generated; or

(2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

(1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and

(2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1991.  
Renumbered from Health & Safety Code Sec. 361.0232 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(27), eff. Sept. 1, 1995.

Sec. 361.024. RULES AND STANDARDS. (a) The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

(e) Rules shall be adopted as provided by Chapter 2001,

Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 2.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.30, eff. Sept. 1, 1995.

Sec. 361.025. EXEMPT ACTIVITIES. (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.026. ASSISTANCE PROVIDED BY COMMISSION. The commission may:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.31, eff. Sept. 1, 1995.

Sec. 361.027. LICENSURE OF SOLID WASTE FACILITY SUPERVISORS.

The commission may implement a program under Chapter 37, Water Code, to license persons who supervise the operation or maintenance of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 36, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 20, eff. Sept. 1, 2001.

Sec. 361.028. INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE. (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

- (1) particular quantities of industrial solid or hazardous waste available in this state for recovery;
- (2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and
- (3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.029. COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE. (a) The commission shall provide by rule for interested persons to engage in activities

that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.33, eff. Sept. 1, 1995.

Sec. 361.030. FEDERAL FUNDS. The commission may accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.031. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS. (a) The commission may administer and spend state funds provided to the commission by legislative appropriations, or otherwise, to make grants to local governments for:

- (1) solid waste planning;
- (2) installation of solid waste facilities; and
- (3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the commission.

(c) The amount of financial assistance granted by the state through the commission to a local government under this chapter must be matched by local government funds at least in equal amounts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY. (a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.

(b) Agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees of the commission or commission contractors have the right to enter at any reasonable time public or private property to investigate or monitor the release or threatened release of a hazardous substance.

(d) Agents or employees of the commission or commission contractors may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(e) Agents or employees of the commission or commission contractors acting under this section shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.35, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, Sec. 3, eff. Aug. 28, 1995.

Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY. (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized



as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE. (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

(c) A penalty collected under Subchapter C or D, Chapter 7, Water Code, for the late filing of a report required by this section shall be deposited to the credit of the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 29, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.008, eff. September 1, 2009.

Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE. The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records

pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the Texas Department of Health, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.36, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. PERMITS**

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the commission issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the commission under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the commission

must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the commission and adopted by rule, the commission may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS.

(a) The commission shall encourage applicants for solid waste facilities or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the commission a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the commission initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under

Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed \$25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by Chapter 2001, Government Code.

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the commission with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(1) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.38, eff. Sept. 1, 1995.

Sec. 361.0635. PREAPPLICATION MEETING. (a) If requested by a person who intends to file a permit application, the commission shall provide the person an opportunity to meet with one or more staff members of the commission to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the commission.

(c) A meeting under this section must be held before the person files the permit application with the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 10, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. (a) If

the commission exercises the power to issue permits for solid waste facilities under this subchapter, the commission, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application.

(b) The commission shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 11, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.0641. NOTICE TO STATE SENATOR AND REPRESENTATIVE. On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the commission shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the deadline set by the commission under Subsection (c).

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

(c) The commission by rule shall establish a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1999.

Sec. 361.0665. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. (a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further information; and

(4) any other information that the commission by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by commission rule.

(d) In addition, the commission shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(a), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.41, eff. Sept. 1, 1995.

Sec. 361.0666. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes may hold a public meeting in the county in which the proposed facility is to be located.

(b) The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 1, eff. September 1, 2005.

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

- (1) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and
- (2) the county judge and the health authority of the county in which the facility is located.



(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the commission, to present comments and recommendations on the permit application before the commission acts on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.42, eff. Sept. 1, 1995.

Sec. 361.068. ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the commission.

(b) Once a determination that an application is administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 2001.003, Government Code:

(1) the commission may not revoke the determination that an application is administratively or technically complete;

(2) the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material provided that all parties may engage in discovery against all other parties, as provided by applicable law; and

(3) a request for additional information does not render the application incomplete.

(c) Subsection (b) does not:

(1) preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or

(2) restrict the right of any party to conduct discovery against any applicable party under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 1, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(62), 11.43, eff. Sept. 1, 1995.

Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The

commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. In making a determination on the question of land use compatibility, the commission shall not consider the position of a state or federal agency unless the position is fully supported by credible evidence from that agency during the public hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 6, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.44, eff. Sept. 1, 1995.

Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW. This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION; HEARING PROCEDURES. (a) Except as provided by Sections 361.080(b) and 361.081(c), the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of Chapter 2001, Government Code.

(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.03, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.45, eff. Sept. 1, 1995.

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission may hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission may hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) Notwithstanding other law, the commission may hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) A public meeting under this section is not a contested case hearing under Chapter 2001, Government Code.

(e) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(f) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (1) the permit application number;
- (2) the applicant's name;

- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(g) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.04, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 3, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 3, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.46, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 2, eff. September 1, 2005.

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.05, eff. June 7, 1991.

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) The commission shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted as of the date the commission determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the commission that the

mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.

(c) In addition to the requirements of Subsection (a), the commission shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.06, eff. June 7, 1991; Acts 1993, 73rd Leg., ch. 802, Sec. 4, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 4, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission may hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a

hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$20,000.

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.07, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 5.06, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 3, eff. September 1, 2005.

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the

record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 14, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, or unless permitted by Section 2001.061, Government Code, a hearings examiner may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) Except for communications allowed under Subsection (a), an employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to respond and shall give all parties an opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 177, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(56), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 106, Sec. 6, eff. Sept. 1, 1995.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES;

REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.



(g) To the extent of a conflict between this section and Section 2001.058(e), Government Code, this section controls.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991.  
Amended by Acts 1995, 74th Leg., ch. 106, Sec. 7, eff. Sept. 1, 1995.

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

- (1) technical studies of the area in which the new hazardous waste facility is proposed to be located;
- (2) expert testimony given at a hearing on the permit application; and
- (3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

- (1) knowingly made false or misleading statements in the application;
- (2) knowingly made false or misleading statements during the hearing; or
- (3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed \$100,000 for a new commercial hazardous waste management facility or \$20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed \$150,000 for a new commercial hazardous waste management facility or \$30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.09, eff. June 7, 1991.

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water

Code.

(b) The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.10, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.48, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 5, eff. Sept. 1, 2001.

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall

protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) The commission may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) The commission shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the commission must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) The commission may:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance

arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the commission, the commission may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

(k) The commission may require financial assurance as a condition of issuing a permit or registration for the collection, transportation, or processing of grit trap waste or grease trap waste. The amount of financial assurance required must be consistent with the degree and duration of risk associated with the type of waste authorized to be collected, transported, or processed.

(l) If the commission requires financial assurance as a condition of a permit or registration under Subsection (k), provision of that financial assurance also satisfies any requirement for financial assurance under Chapter 368.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.12, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.49, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 591, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSURANCE. (a) In this section:

(1) "Bonds" means financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

(2) "Local government" includes:

(A) a local government corporation created under Chapter 431, Transportation Code, to act on behalf of a local government; and

(B) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding any requirement of the commission for the demonstration of financial assurance, a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the commission for the demonstration of financial assurance in relation to closure, post closure, or corrective action, if the local government:

(1) establishes and passes a financial test in accordance with commission rules; and

(2) demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a current rating of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa, Aa, A, or Baa as determined by Moody's.

(c) A local government must demonstrate financial assurance under this section:

(1) before the date of the initial receipt of waste at the facility; or

(2) as soon as practicable if, on the effective date of this section, the facility was in operation and had received waste.

Added by Acts 2005, 79th Leg., Ch. 154 (H.B. [2131](#)), Sec. 1, eff. May 24, 2005.

Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) Except as provided by Subsection (d), a separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

(d) A separate permit is not required for activities authorized by a general permit issued under Section 27.025, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(10), eff. September 1, 2009.

Sec. 361.0861. SEPARATE RECYCLING OR RECOVERY PERMIT NOT REQUIRED. (a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling, waste separation, energy and material recovery, or gas recovery or transfer facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling, waste separation, energy and material recovery, or gas recovery or transfer facility a separate permit from the commission or to apply for an amendment to an existing permit issued by the commission.

(b) A facility to which this section applies must register with the commission in accordance with commission rules and comply with commission rules adopted under this chapter.

(c) If a permit is otherwise required, the commission shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 15, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.50, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED.

(a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a).

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.13, eff. June 7, 1991.  
Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a), eff. Jan. 11, 2004.

## Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION AND

RENEWAL; NOTICE AND HEARING. (a) The commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the commission.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Except as provided by Subsection (e), before a permit is issued, amended, extended, or renewed, the commission shall provide an opportunity for a hearing to the applicant and persons affected.



The commission may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the commission shall hold a public meeting and give notice as provided by Section 361.0791.

(e) After complying with Sections 5.552-5.555, Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; and

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing.

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(g) The commission shall review a permit issued under this chapter every five years to assess the permit holder's compliance history.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.14, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 4.05, 16.11, eff. Sept. 1, 2001.

Sec. 361.0885. DENIAL OF APPLICATION; INVOLVEMENT OF FORMER EMPLOYEE. (a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 16, eff. Sept. 6, 1990.

Sec. 361.089. PERMIT DENIAL OR AMENDMENT; NOTICE AND HEARING.

(a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(b) Except as provided by Section 361.110, the commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The commission may also hold a hearing on its own motion.

(c) The commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

(e) The commission may deny an original or renewal permit if it

is found, after notice and hearing, that:

(1) the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections;

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

(g) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.11, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.52, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 16.12, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.24, eff.

September 1, 2011.

Sec. 361.0895. FACILITIES REQUIRED TO OBTAIN FEDERAL APPROVAL. For a commercial hazardous waste disposal well facility originally permitted by the commission after June 7, 1991, and which is required to obtain from the United States Environmental Protection Agency a variance from the federal land disposal restrictions before injecting permitted hazardous wastes:

(1) a permit or other authorization issued to the facility under this chapter is not subject to cancellation, amendment, modification, revocation, or denial of renewal because the permit holder has not commenced construction or operation of the facility; and

(2) the fixed term of each permit or other authorization issued to the facility under this chapter shall commence on the date physical construction of the authorized waste management facility begins.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water

quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0901. REGULATION AND PERMITTING OF CERTAIN COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. (a) In this section:

(1) "Captured facility" has the meaning assigned by Section 361.131.

(2) "Commercial industrial solid waste facility" means any industrial solid waste facility that accepts industrial solid waste for a charge, but does not include a municipal solid waste facility, a captured facility, or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(3) "Publicly owned treatment works" means any device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial waste of a liquid nature that is owned by a state or by a municipality as defined by Section 502(4), Federal Water Pollution Control Act (33 U.S.C. Section 1362). The term includes a sewer, pipe, or other conveyance only if the sewer, pipe, or conveyance conveys wastewater to a publicly owned treatment works providing treatment.

(b) A commercial industrial solid waste facility may not receive industrial solid waste for discharge into a publicly owned treatment works facility without first obtaining from the commission a permit under this chapter or a permit under Chapter 26, Water Code.

(c) This section does not require a commercial industrial solid waste facility to obtain a permit for discharge into a publicly owned treatment works facility liquid wastes that are incidental to the

handling, processing, storage, or disposal of solid wastes at a municipal solid waste facility or commercial industrial solid waste landfill facility.

Added by Acts 2005, 79th Leg., Ch. 362 (S.B. 1281), Sec. 1, eff. September 1, 2005.

Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS. (a) A municipal solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the commission and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the commission to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the commission that includes the approved route, date, and time; and

(4) a commission inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The commission may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The commission may adopt rules of procedure necessary to carry out the permit program.

(c) The commission may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The commission shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the commission for the compensation and expenses as provided by this section.

(d) The commission shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The commission shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the commission shall equitably apportion the costs of the inspection

program and issue an order assessing the annual costs against each permit holder. The commission may provide for payments in installments and shall specify the date by which each payment must be made to the commission.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The commission's order assessing costs is effective until the commission:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The commission may adopt rules necessary to carry out this section.

(i) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(j) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.53, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 31, eff. Sept. 1, 1997.

Sec. 361.092. REGISTRATION FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The commission may require a registration to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The commission shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 2, eff. Sept. 1, 1995.

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS.

(a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or



from a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995.

Sec. 361.095. APPLICANT FOR HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT EXEMPT FROM LOCAL PERMIT. (a) An applicant for a permit under this subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, Sec. 12, eff. Sept. 1, 1993.

Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall condition

the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.15, eff. June 7, 1991.

Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS. (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE ZONE OF SOLE SOURCE AQUIFER. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the

proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.16, eff. June 7, 1991.

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(b) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half

of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.17, eff. June 7, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.55, eff. Sept. 1, 1995.

Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

- (1) flood hazards;
- (2) discharge from or recharge to a groundwater aquifer;
- (3) soil conditions;
- (4) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (5) active geological processes;
- (6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or
- (7) critical habitat of endangered species.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA. (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

- (b) A rule adopted under this section may not affect the siting

of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.107. HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES. The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.108. ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL. The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

- (1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;
  - (2) the costs associated with the above grade construction;
- and
- (3) the potential adverse effects, if any, that would be associated with the above grade construction.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.18, eff. June 7, 1991.

Sec. 361.110. TERMINATION OF AUTHORIZATION OR PERMIT.

Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

- (1) in the case of each land disposal facility, on November

8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.111. COMMISSION SHALL EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall exempt from permit requirements a municipal solid waste management facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

- (1) a municipality with a population of less than 50,000;
- (2) a county with a population of less than 85,000;

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(3) a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08

- (4) a materials recovery facility that recycles for reuse

more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility must comply with design and operational requirements established by commission rule that are necessary to protect the public's health and the environment.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(c) To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 17, eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 5, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.08, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 10, eff. Sept. 1, 1993.

Sec. 361.112. STORAGE, TRANSPORTATION, AND DISPOSAL OF USED OR SCRAP TIRES. (a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the commission. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(b) The commission may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the commission for that purpose.

(d) The commission may issue a permit for a facility for the disposal of used or scrap tires.

(e) The commission by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The commission shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The commission may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

(k) The commission may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 18, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 3, eff.

Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 3.11, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 317, Sec. 26, eff. Sept. 1, 1995.

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.01, eff. Sept. 1, 2001.

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement

that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.19, eff. June 7, 1991.

Sec. 361.114. PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. The commission by rule shall prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.20, eff. June 7, 1991. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.02, eff. Sept. 1, 2001.

Sec. 361.115. CERTIFICATION OF LANDFILL CAPACITY TO MUNICIPALITY; RESTRICTIONS ON CONTRACT. (a) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county, before entering into a contract with a municipality for the disposal of the municipality's solid waste, must certify to the municipality that the facility has the capacity to dispose of the volume of waste proposed in the contract for the duration of the contract, if requested in writing by the municipality.

(b) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality to dispose of the municipality's solid waste may not enter into a contract to accept solid waste generated from outside the municipality's extraterritorial jurisdiction for disposal at the facility in an amount that would reduce the projected life of the facility to less than the remaining duration of the

contract for the disposal of the municipality's waste unless alternative disposal is provided.

(c) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality for the disposal of the municipality's solid waste shall, if requested in writing by the municipality, certify and report to the municipality annually that the owner or operator has the capacity to fulfill its contractual obligations to the municipality for solid waste disposal. The certification if requested must include a statement:

(1) of the remaining permitted solid waste disposal capacity of the facility;

(2) of the contractually committed volumes or tonnages of waste accepted at the facility; and

(3) from the owner or operator that the facility possesses the capacity to fulfill the disposal commitments in the contract with the municipality.

Added by Acts 1993, 73rd Leg., ch. 400, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.116. DISPOSAL OF INCIDENTAL INJECTION WELL WASTE. Notwithstanding Chapter 2001, Government Code, and any other provision of this chapter, the commission shall grant to the owner or operator of a commercial hazardous waste disposal well facility originally permitted after June 7, 1991, a permit modification that authorizes the construction and operation of an on-site or adjoining landfill for the disposal of hazardous and nonhazardous solid waste generated by the operation of the facility if the proposed landfill meets all applicable state and federal design requirements and the commission follows a public notice and comment procedure that is consistent with 40 C.F.R. Section 270.42.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.117. DISPOSAL OF CARCASSES OF ANIMALS KILLED ON ROADWAYS. (a) Notwithstanding any other provision of this chapter, counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity that is responsible for road



maintenance. No permit shall be required to dispose of animal carcasses on county or municipal property. Disposal shall be conducted in a manner consistent with public health.

(b) Notwithstanding any other provision of this chapter, the Texas Department of Transportation may dispose of the carcasses of animals killed on the state highway system by burying the carcasses on state highway right-of-way. No permit shall be required to dispose of animal carcasses on state highway right-of-way. Disposal shall be conducted in a manner consistent with public health.

Added by Acts 1997, 75th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 361.116 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(67), eff. Sept. 1, 1999.

Sec. 361.118. REMEDIAL ACTION REGARDING INDUSTRIAL SOLID WASTE DISPOSED OF IN MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) This section applies only to a municipal solid waste landfill facility:

- (1) for which the commission has issued a permit; and
- (2) a portion of which:

(A) has been used for the disposal of more than 15,000 barrels of industrial solid waste;

(B) is closed; and

(C) is the subject of a notice regarding the former use of the property recorded in the real property records of the county in which the facility is located.

(b) If the commission determines that there is a release or that a release is imminent into the environment of industrial solid waste disposed of in the portion of the facility that has been closed, the commission shall require the owner of the facility to remediate as necessary and to the extent practicable to prevent or minimize the release of the waste so that the waste does not migrate or have the potential to migrate.

(c) If the commission requires the owner of the facility to remediate under Subsection (b), the owner shall develop a remedial action plan and must obtain a major amendment to the permit for the facility approving the plan.

(d) This section does not limit the applicability of Section 26.121, Water Code.

Added by Acts 1999, 76th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1999.

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to regulation or requirements for financial assurance under rules adopted under this section.

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

(f) The commission shall adopt rules to ensure that the owner or operator of a recycling facility, including a composting or mulching facility, has in place sufficient financial assurance conditioned on satisfactorily operating and closing the facility and consistent with the requirements of Section 361.085 for a solid waste facility other than a facility for the disposal of hazardous waste. This subsection applies only to an owner or operator of a recycling

facility:

- (1) at which combustible material is stored outdoors; or
- (2) that poses a significant risk to public health and safety as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 600, Sec. 1, eff. June 20, 2003.

Sec. 361.1191. REGULATION OF CERTAIN RECYCLING FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a municipal solid waste recycling facility that does not hold a permit or registration issued by the commission that stores combustible materials to produce mulch or compost and is located in a county that:

- (1) has a population of more than 1.3 million; and
- (2) includes areas designated as a recharge or transition zone of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principal source of drinking water for an area designated under Section 1424(e), Safe Drinking Water Act of 1974 (42 U.S.C. Section 300h-3(e)) and by the Environmental Protection Agency as the Edwards Underground Reservoir under 40 Federal Register 58344.

(b) The commission by rule shall:

- (1) prescribe time limits for processing and removing materials from a facility;
- (2) limit the amount of combustible material that may be stored at a recycling facility;
- (3) limit the size of a pile of combustible recyclable or recycled materials, including composting materials or mulch, at a recycling facility;
- (4) impose different standards for a recycling facility appropriate to the size and number of piles of combustible materials to be stored or processed at the facility;
- (5) require a recycling facility to establish fire lanes between piles of combustible materials;
- (6) require buffer zones between a recycling facility and a residence, school, or church; and
- (7) for a recycling facility that is located on a recharge

or transition zone referenced in Subsection 361.1191(a)(2):

(A) impose more stringent standards; and

(B) require groundwater protection features, such as liners and monitor wells.

(c) A rule adopted by the commission under this section does not become effective until the first anniversary of the date on which the rule was adopted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 2, eff. September 1, 2007.

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use, as provided by Section 361.069.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.04, eff. Sept. 1, 2001.

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) Except as provided by Subsection (m), a responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application of the sludge to the proposed land application unit. An owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

- (1) the duration of the permit;
  - (2) the location of the land application unit;
  - (3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;
  - (4) a requirement that the permit holder submit quarterly to the commission a computer-generated report that includes, at a minimum, information regarding:
    - (A) the source, quality, and quantity of sludge applied to the land application unit;
    - (B) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;
    - (C) the date of delivery of Class B sludge;
    - (D) the date of application of Class B sludge;
    - (E) the cumulative amount of metals applied to the land application unit through the application of Class B sludge;
    - (F) crops grown at the land application unit site; and
    - (G) the suggested agronomic application rate for the Class B sludge;
  - (5) a requirement that the permit holder submit annually to the commission evidence that the permit holder is complying with the nutrient management plan and the practice standards described by Subsection (h)(4);
  - (6) a requirement that the permit holder post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a beneficial application site is located on the premises;
  - (7) any other monitoring and reporting requirements prescribed by the commission for the permit holder; and
  - (8) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the permit conditions or applicable commission rules.
- (e) A permit does not become a vested right in the permit holder.
- (f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.
- (g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than \$1,000 and not more than \$5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under

the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum:

(1) information regarding:

(A) the applicant;

(B) the source, quality, and quantity of sludge to be applied; and

(C) the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit;

(2) proof evidencing that the applicant has a commercial liability insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than \$3 million;

(3) proof evidencing that the applicant has an environmental impairment insurance policy or similar insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than \$3 million; and

(4) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the practice standards of the Natural Resources Conservation Service of the United States Department of Agriculture.

(i) The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.

(j) A permit holder must maintain an insurance policy required by Subsection (h) in effect for the duration of the permit.

(k) The commission shall create and operate a tracking system for the land application of Class B sludge. The commission shall require a permit holder to report deliveries and applications of Class B sludge using the tracking system and shall post the reported information on its website. The tracking system must allow a permit holder to report electronically:

(1) the date of delivery of Class B sludge to a land application unit; and

(2) for each application of Class B sludge to a land application unit:

(A) the date of the application; and

(B) the source, quality, and quantity of the sludge applied.

(l) A permit holder may not accept Class B sludge unless the sludge has been transported to the land application unit in a covered container with the covering firmly secured at the front and back.

(m) A person who holds a registration for the application of Class B sludge for a beneficial use approved by the commission and who, on or before September 1, 2002, has submitted to the commission an administratively complete application for a permit under this section may apply Class B sludge in accordance with the terms of the registration until the commission issues a final decision to issue or deny the permit for which the person has applied.

(n) The insurance requirements under Subsections (h)(2) and (3) do not apply to an applicant that is a political subdivision.

(o) The commission may not issue a permit under this section for a land application unit that is located both:

(1) in a county that borders the Gulf of Mexico; and

(2) 500 feet or less from any water well or surface water.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.05(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 681, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;



(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.08, eff. Sept. 1, 2001.

Sec. 361.123. LIMITATION ON LOCATION OF MUNICIPAL SOLID WASTE LANDFILLS. (a) This section applies to an application for a permit for a new Type I or new Type IV municipal solid waste landfill or for a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill only if the landfill or proposed site for the new landfill is located in a county that is adjacent to a county with a population of more than 3.3 million and inside the boundaries of a national forest, as designated by the United States Forest Service, on public or private land.

(b) The commission may not issue a permit for a new Type I or new Type IV municipal solid waste landfill to be located as described by Subsection (a).

(c) The commission may not issue a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill located as described by Subsection (a) to a Type I municipal solid waste landfill.

(d) This section does not apply to an application for a permit or permit amendment authorizing an areal expansion of an existing Type I municipal solid waste landfill.

Added by Acts 2005, 79th Leg., Ch. 1027 (H.B. 1053), Sec. 1, eff. June 18, 2005.

Sec. 361.124. ALLOWED WASTES AND EXEMPTIONS FOR CERTAIN SMALL MUNICIPAL SOLID WASTE LANDFILLS IN ARID AREAS. (a) In this section:

(1) "Construction or demolition waste" means any material waste that is the byproduct of a construction or demolition project,

including paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(2) "Small municipal solid waste landfill unit" means a discrete area of land or an excavation that:

(A) receives municipal solid waste or other solid wastes allowed by law; and

(B) disposes of less than 20 tons of municipal solid waste daily based on an annual average.

(b) This section applies only to a small municipal solid waste landfill unit that is permitted as an arid exempt landfill under commission rules.

(c) A small municipal solid waste landfill unit daily may dispose of less than 20 tons of construction or demolition waste in addition to the municipal solid waste the unit normally receives.

(d) The commission, in accordance with state and federal solid wastes laws, may, under rules adopted by the commission, grant a small municipal solid waste landfill unit an exemption from the requirements for groundwater protection design and operation and groundwater monitoring and corrective action if there is no evidence of groundwater contamination from the unit.

(e) The commission shall adopt rules as are necessary to implement this section in a manner that maintains compliance with and state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 4, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 361.123 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(48), eff. September 1, 2007.

Sec. 361.126. DISPOSAL OF DEMOLITION WASTE FROM ABANDONED OR NUISANCE BUILDING. (a) This section applies only to a building that has been:

- (1) abandoned or found to be a nuisance;
- (2) acquired by the county or municipality by means of:
  - (A) bankruptcy;
  - (B) tax delinquency; or

(C) condemnation; and

(3) previously owned by a person not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(b) The commission may issue a permit by rule to authorize the governing body of a county or municipality with a population of 12,000 or less to dispose of demolition waste from a building if the disposal occurs on land that:

- (1) the county or municipality owns or controls; and
- (2) would qualify for an arid exemption under commission

rules.

(c) The commission shall adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of demolition waste under this section to protect public and private property, rights-of-way, groundwater, and any other right that requires protection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 71 (S.B. [1258](#)), Sec. 1, eff. May 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 449 (S.B. [819](#)), Sec. 1, eff. June 14, 2013.

**SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION, FACILITY, AND MANAGEMENT; FEES AND FUNDS**

Sec. 361.131. DEFINITIONS. In this subchapter:

(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator" means a person whose act or process

produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 19, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 692, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 1, eff. Aug. 30, 1993.

Sec. 361.132. HAZARDOUS AND SOLID WASTE FEES; WASTE MANAGEMENT ACCOUNT. (a) The waste management account is an account in the general revenue fund.

(b) The account consists of money:

(1) collected by the commission under this subchapter as:

(A) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(B) fees imposed on owners or operators of permitted

industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(C) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136;

(D) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(E) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter; or

(2) deposited to the account as otherwise provided by law.

(c) Except as provided by Section 361.136(1)(1), the commission may use the money collected under this subchapter only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) Any unobligated balance in the account at the end of the state fiscal year may, at the discretion of the commission, be transferred to the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 20, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) The hazardous and solid waste remediation fee account is an account in the general revenue fund.

(b) The account consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) the interest received from the investment of this account, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee account;

(5) monies transferred from other agencies under provisions of this code or grants or other payments from any person made for the purpose of remediation of facilities under this chapter or the investigation, cleanup, or removal of a spill or release of a hazardous substance;

(6) fees imposed under Section 361.604; and

(7) federal grants received for the implementation or administration of state voluntary cleanup programs or federal brownfields initiatives.

(c) The commission may use the money collected and deposited to the credit of the account under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the account for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of

household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances;

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment;

(6) expenses concerning implementation of the voluntary cleanup program under Subchapter S or federal brownfields initiatives; and

(7) expenses, not to exceed 10 percent of the annually appropriated amount of the fees on batteries collected under Section 361.138, related to lead-acid battery recycling activities, including expenses for programs:

(A) for remediation; and

(B) to create incentives for the adoption of innovative technology in lead-acid battery recycling to increase the efficiency and effectiveness of the recycling process or reduce the negative environmental impacts of the recycling process.

(c-1) Notwithstanding Subsection (c), money in the account attributable to fees imposed under Section 361.138 may be used for environmental remediation at the site of a closed battery recycling facility located in the municipal boundaries of a municipality if the municipality submits to the commission a voluntary compliance plan for the site and is paying or has paid for part of the costs of the environmental remediation of the site. This subsection expires September 30, 2014.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary. The amount collected each year shall not exceed \$16 million after making payments to counties under Section 361.136(1)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee account and all sources of revenue to the account and may adjust the amount of fees collected under Subsection (d) and Section 361.138, within prescribed limits, to maintain an unobligated balance of no more than \$25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e), the unobligated balance in the hazardous and solid waste remediation fee account shall be determined by subtracting from the cash balance of the account at the

end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the account;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the account; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapter F or I and not currently under contract.

(g) Notwithstanding Subsection (c), the executive director may use money in the account, including interest credited under Subsection (b)(4), for expenses concerning a cleanup or removal of a spill, release, or potential threat of release of a hazardous substance if the site is eligible for listing under Subchapter F, proposed for listing under Subchapter F, or listed under the state registry before September 1, 1989, and:

(1) immediate action is appropriate to protect human health or the environment and there is a substantial likelihood that the cleanup or removal will prevent the site from needing to be listed under Subchapter F; or

(2) a cleanup or removal:

(A) can be completed without extensive investigation and planning; and

(B) will achieve a significant cost reduction for the site.

(h) If the commission collects a fee that is deposited in a dedicated fund established for the purpose of cleaning up a facility, tank, or site described by this subsection, the commission may not use money in the hazardous and solid waste remediation fee account to clean up a:

(1) waste tire recycling facility;

(2) municipal solid waste facility;

(3) petroleum storage tank; or

(4) used oil collection and recycling site that received used oil after August 31, 1995.

(i) Not later than the 31st day before the date the commission begins a cleanup or removal under Subsection (g), the commission must publish notice of its intent to perform the cleanup or removal in the Texas Register.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 21, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 986, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.05, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.009, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 123 (H.B. 3765), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 5, eff. June 14, 2013.

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 and may not be more than \$50,000 for generation of hazardous waste or more than \$10,000 for generation of nonhazardous waste.

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee account shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are

designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 39, eff. Sept. 1, 1997.

Sec. 361.135. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee prescribed by this section is imposed on each person who holds one or more permits for the management of Class I industrial solid waste or hazardous waste or is operating a waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged.

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991.

Sec. 361.136. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for industrial solid waste and hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for management of hazardous waste and commercial disposal of industrial solid waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) Fees under this section may apply only to the following:

(A) commercial and noncommercial storage, processing, or disposal of hazardous waste; or

(B) commercial disposal of Class I nonhazardous industrial solid waste.

(2) A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of the fee established for the disposal of a hazardous waste by the same method of disposal.

(3) A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.

(c) The waste management fee shall be based on the total weight or volume of a waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The waste management fee for wastes generated in this state may not exceed \$40 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define

considering:

- (1) Btu content;
- (2) metals content;
- (3) chlorinated hydrocarbon content; and
- (4) the degree to which the waste fuel is used for energy

recovery.

(f) A fee imposed on the owner or operator of a commercial industrial solid waste or hazardous waste storage, processing, or disposal facility, for wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial industrial solid waste or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of money from the hazardous and solid waste remediation fee account or generated in a removal or remedial action in this state conducted by the United States Environmental Protection Agency shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

- (1) factors specified by Section 361.139;
- (2) added costs to the state of regulating the interstate

transport and subsequent management and disposal of imported industrial solid wastes and hazardous wastes and their associated

risks;

(3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

(4) contributions in both fees and taxes paid by generators in this state to the support of the state's industrial solid waste and hazardous waste regulatory programs.

(k) A fee for industrial solid wastes or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

(1) 25 percent of the waste management fees collected from each commercial waste storage, processing, or disposal facility under this section shall be credited to the waste management account to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial industrial solid waste and hazardous waste management facilities; and

(2) of the remaining amount of the commercial waste management fees and of the total amount of the noncommercial waste management fees collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee account; and

(B) 50 percent of each amount shall be credited to the waste management account.

(m) Funds due an affected county under Subsection (l)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of industrial solid waste and hazardous waste; and

(2) for a method to determine or estimate the dry weight of small volumes of waste delivered to waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of industrial solid waste or hazardous waste

shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Renumbered from Sec. 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 6, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 5, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.137. PERMIT APPLICATION FEE. (a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.

(c) The commission may also establish a fee rate for approval of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than \$2,000.

(d) Application fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 9, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 2, eff. June 20, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 41, eff. Sept. 1, 1997.

Sec. 361.138. FEE ON THE SALE OF BATTERIES. (a) In this section:

(1) "Engaged in business in this state" has the meaning provided under Sections 151.107(a) and (b), Tax Code.

(2) "Lead-acid battery" means any battery which contains lead and sulfuric acid.

(3) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(4) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

(b) A wholesale or retail battery dealer who sells or offers to sell lead-acid batteries not for resale shall collect at the time and place of sale a fee for each nonexempt lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of \$2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of \$3.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report

is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer required to collect a fee under this section may retain 2-1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed four percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee account.

(k) A battery is exempt from this section if it meets all of the following criteria:

(1) the ampere-hour rating of the battery is less than 10 ampere-hours;

(2) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(3) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(l) A fee is imposed on the storage, use, or other consumption in this state of a lead-acid battery, unless purchased for resale, at the same rate as provided by Subsection (b).

(m) A person storing, using, or consuming a lead-acid battery in this state is liable for the fee imposed by Subsection (l) and is responsible for reporting and paying it to the comptroller in the same manner as a person required to collect the fee provided for in Subsections (c)(2) and (d).

(n) A person storing, using, or consuming a lead-acid battery in this state is not liable for the fee if the person pays the fee to a wholesaler or retailer engaged in business in this state or other person authorized by the comptroller to collect the fee and receives



from the person a receipt showing that the fee has been paid.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 11, eff. Aug. 26, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 6, eff. Aug. 30, 1993;  
Acts 1995, 74th Leg., ch. 1000, Sec. 64, eff. Oct. 1, 1995; Acts  
1997, 75th Leg., ch. 333, Sec. 42, eff. Sept. 1, 1997.

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES. (a)  
To promote the public policy of preferred waste management methods  
under Section 361.023 and to provide for an equitable fee rate  
structure, the commission shall consider the following in  
establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated with  
different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of  
industrial solid waste and hazardous waste reclamation, reuse, and  
recycling facilities;

(B) promoting the public policy of preferred waste  
management methods for waste streams that are amenable to multiple  
waste management methods; and

(C) considering whether the waste is ultimately  
disposed of in the state;

(2) the funding needed to adequately and equitably support  
the regulation of industrial solid waste and hazardous waste  
generation, storage, processing, and disposal activities and the  
remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and  
the variation in the cost of regulating different types of  
facilities;

(B) the cost to the state of operating an effective  
program for the regulation of industrial solid waste and hazardous  
waste which protects human health and the environment and is  
consistent with state and federal authority;

(C) the higher costs of regulation and oversight that  
may be required for commercial waste management facilities;

(D) the sources and causes of contamination at sites in  
need of remediation; and

(E) the benefits and beneficiaries of the regulatory  
programs and activities supported through fees assessed under this

subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a waste management fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for industrial solid waste and hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 7, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 7, eff. Aug. 30, 1993.

Sec. 361.140. INTEREST AND PENALTIES. (a) The commission by rule shall establish requirements for the assessment of penalties and interest for late payment of fees owed the state under Sections 361.134 through 361.137. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(c) Relettered as subsec. (b) by Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 23, eff. Sept. 6, 1990. Renumbered from Sec. 361.137 and amended by Acts

1991, 72nd Leg., ch. 710, Sec. 8, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

#### **SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS**

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the commission from exercising the powers vested in the commission under other provisions of this chapter, including the provisions authorizing the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The commission, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.57, eff. Sept. 1, 1995.

Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE. The powers specified by Sections 361.154-361.162 and Section 364.011 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 570, Sec. 3, eff. Sept. 1, 1999.

Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAMS; FEES.

(a) A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.

(b) As sufficient funds are made available by the commission, a county shall develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, and other governmental entities, as prescribed by Subchapter D, Chapter 363; and

(2) the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 25, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.58, eff. Sept. 1, 1995.

Sec. 361.154. COUNTY LICENSING AUTHORITY. (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the commission; and

(2) approved by the commission.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.59, eff. Sept. 1, 1995.

Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO COMMISSION. The county shall mail a copy of each license application with pertinent supporting data to the commission. The commission has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.60, eff. Sept. 1, 1995.

Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY. (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.157. CONTENTS OF LICENSE. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.158. LICENSE FEE. (a) A county may charge a license fee not to exceed \$100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.159. LICENSE ISSUANCE; AMENDMENT, EXTENSION, AND RENEWAL. (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.61, eff. Sept. 1, 1995.

Sec. 361.160. LICENSE AMENDMENT. (a) A county may, for good cause, after hearing with notice to the license holder and to the commission, amend a license it issues for reasons concerning:

- (1) public health;
- (2) air or water pollution;
- (3) land use; or
- (4) a violation of this chapter or of other applicable laws

or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the commission may for good cause amend a license issued by a county, after hearing with notice to:

- (1) the license holder; and
- (2) the county that issued the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 33, eff. Sept. 1, 1997.

Sec. 361.161. PERMIT FROM COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the commission for the same facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995.

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES.

(a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.166. MUNICIPAL RESTRICTIONS. A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION. A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES**

Sec. 361.181. STATE REGISTRY: ANNUAL PUBLICATION. (a) The commission shall annually publish an updated state registry identifying, to the extent feasible, each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

(b) The registry shall identify the relative priority for action at each listed facility. The relative priority for action at facilities listed on the registry shall be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

(c) In this subchapter:

(1) "Facility" means any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft), or any site or area where a hazardous substance has been



deposited, stored, disposed of, or placed or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel.

(2) "Homestead" has the meaning designated by Section 51, Article XVI, Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 2003, 78th Leg., ch. 661, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.182. INVESTIGATIONS. (a) The executive director may conduct investigations of facilities that are listed on the state registry, or that the executive director has reason to believe should be included on the state registry, in accordance with Sections 361.032, 361.033, and 361.037.

(b) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance at a facility, the executive director may submit requests for information and requests for the production of documents to any person who has or may have information or documents relevant to:

(1) the identification, nature, or quantity of materials that have been generated, treated, stored, or disposed of at a facility or transported to a facility;

(2) the identification of soils, groundwater, or surface water at a facility that have been or may be affected by an actual or threatened release of a hazardous substance;

(3) the nature or extent of a release or threatened release of a hazardous substance at or from a facility; or

(4) the ability of a person to pay for or to perform a remedial action.

(c) If the requested information or documents are not produced in a timely manner, the commission may issue an order directing compliance with the requests for information or production of documents. Information or documents requested under Subsection (b) or this subsection are public records, except that the commission shall consider the copied records as confidential if a showing satisfactory to the commission is made by the owner of the records that the records would divulge trade secrets if made public. This

subsection does not require the commission to consider the composition or characteristics of hazardous substances being processed, stored, disposed of, or otherwise handled to be held confidential.

(d) The commission shall adopt rules regarding the provision of notice and an opportunity for a hearing before the commission on whether the requested information or documents should be produced.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.183. REGISTRY LISTING PROCEDURE: DETERMINATION OF ELIGIBILITY. (a) Before listing a facility on the state registry, the executive director shall determine whether the potential endangerment to public health and safety or the environment at the facility can be resolved by:

(1) the present owner or operator under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901);

(2) some or all of the potentially responsible parties identified in Subchapter I, under an agreed administrative order issued by the commission; or

(3) an agreement under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

(b) If the potential endangerment to public health and safety or the environment can be resolved in such a manner, the facility may not be listed on the state registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that this action is being taken in lieu of listing the facility on the state registry shall be published in the Texas Register.

(c) If after reasonable efforts the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of the approaches under Subsection (a), the executive director shall evaluate the facility to determine whether the site exceeds the commission's minimum criteria for listing on the state registry. The commission by rule shall adopt the minimum criteria. The executive

director shall also evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List.

(d) The commission shall proceed under this subchapter only if, based on information available to the executive director, the facility is eligible for listing on the state registry but not eligible for the federal National Priorities List.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 3, eff. Sept. 1, 1997.

Sec. 361.184. REGISTRY LISTING PROCEDURE: NOTICES AND HEARING.

(a) If the executive director determines that a facility is eligible for listing on the state registry, the commission shall publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list the facility on the state registry. The notice shall at least specify the name and location of the facility, the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time, and the duties and restrictions imposed by Subsection (c). The notice also shall provide that interested parties may do either or both of the following:

- (1) submit written comments to the commission relative to the proposed listing of the facility; or
- (2) request a public meeting to discuss the proposed listing by submitting a request not later than the 30th day after the date on which the notice is issued.

(b) If the facility is determined to be eligible for listing on the state registry, the executive director shall make all reasonable efforts to identify all potentially responsible parties for remediation of the facility. Concurrent with the publication of general notice under Subsection (a), the executive director shall provide to each identified potentially responsible party direct, written notification of the proposed listing of the facility on the state registry and of the procedures for requesting a public meeting to discuss the listing and the information included in the general notice as required by Subsection (a). Written notifications under

this subsection shall be by certified mail, return receipt requested, to each named responsible party at the party's last known address.

(c) If a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the same newspaper in which the notice of the opportunity to request the public meeting was published. The public meeting notice shall be provided not later than the 31st day before the date of the meeting. Notice of the meeting also shall be provided by certified mail, return receipt requested, to each identified potentially responsible party at the party's last known address.

(d) Nonreceipt of any notice mailed to a potentially responsible party under Subsection (b) or this subsection does not affect the responsibilities, duties, or liabilities imposed on the party. Contemporaneously with issuing the notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For the purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours.

(e) A public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties.

(f) After the public meeting or after opportunity to request a public meeting has passed, the commission shall file or cause to be filed an affidavit or notice in the real property records of the county in which the facility is located identifying the facility as one proposed for listing on the state registry unless the executive director determines, based on information presented at the public meeting, that efforts to list the facility on the state registry should not be pursued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff.

Sept. 1, 1995.

Sec. 361.185. INVESTIGATION/FEASIBILITY STUDY. (a) After the public meeting or after opportunity to request a public meeting has passed, but before any listing of the facility on the state registry, the commission shall allow all identified potentially responsible parties the opportunity to fund or conduct, if appropriate, a remedial investigation/feasibility study, or a similar study as approved by the executive director, for the facility. Not later than the 90th day after notice under Section 361.184(a) is issued, the potentially responsible parties may make a good faith offer to conduct the study. If a good faith offer from all or some of the potentially responsible parties is received by the commission within that period, those making the offer have an additional 60 days within which to negotiate an agreed administrative order from the commission, which must include a scope of work. In the agreed administrative order the commission may not require the participating potentially responsible parties to agree to perform the remedial action or admit liability for the facility remediation.

(b) If no potentially responsible party makes a good faith offer to conduct the remedial investigation/feasibility study or similar study as approved by the executive director or if the participating potentially responsible parties fail to conduct or complete an approved study, the commission may conduct or complete the study using funds from the hazardous waste disposal fee fund.

(c) To encourage potentially responsible parties to perform the remedial investigation/feasibility study or other similar study as approved by the executive director, costs for commission oversight of the study may not be assessed against those parties who fund or perform the study. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility under this chapter or who subsequently enter into an agreed order relative to the remediation of the facility may be assessed up to the full costs for commission oversight of the study process. If all potentially responsible parties participate or agree to fund the remedial investigation/feasibility study or other similar study, all commission oversight costs shall be paid from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.1855. PROPOSAL OF LAND USE OTHER THAN RESIDENTIAL.

(a) The executive director shall hold a public meeting to obtain public input and information regarding the appropriate use of land on which a facility is located that is the subject of a remedial investigation/feasibility study if:

(1) a land use other than residential is proposed as appropriate for the land by:

(A) the executive director; or

(B) a potentially responsible party who has entered into an agreed order with the commission;

(2) the proposal is made before the study is completed; and

(3) a local government has not zoned the land as residential only.

(b) Any interested person may comment at the meeting.

(c) The meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code.

(d) Not later than the 31st day before the date of the meeting, the commission shall:

(1) publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located;

(2) mail notice of the meeting to each potentially responsible party by certified mail, return receipt requested, at the party's most recent address as shown on the records of the commission; and

(3) make the commission's records regarding the facility available to any interested person.

(e) The notice shall:

(1) state the date, time, and place of the meeting; and

(2) provide information regarding the proposed land use.

(f) The failure of a potentially responsible party to receive a notice under this section does not affect the responsibilities, duties, or liabilities of the party.

(g) After the meeting, the executive director shall select the

appropriate land use for purposes of selecting a proposed remedial action.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 4, eff. Sept. 1, 1997.

Sec. 361.186. FACILITY ELIGIBLE FOR LISTING: ACTIVITIES AND CHANGE OF USE. (a) If the executive director determines that a facility is eligible for listing on the state registry, a person may not perform at the facility any partial or total removal activities except as authorized by the executive director in appropriate circumstances after notice and opportunity for comment to all other potentially responsible parties. The commission may adopt rules determining what constitutes an appropriate circumstance to take removal action under this subsection. Authorization by the executive director to conduct a partial or total removal action does not constitute:

(1) a final determination of the party's ultimate liability for remediation of the facility; or

(2) a determination of divisibility.

(b) If the facility is determined to be eligible for listing on the state registry, the owner or operator of the facility must provide the executive director with written notice of any substantial change in use of the facility before the 60th day before the date on which the change in use is made. Notice of a proposed substantial change in use must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use. A substantial change in use shall be defined by rule and must include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) If, within 30 days after the date of the notice, the executive director determines that the proposed substantial change in use will interfere significantly with a proposed or ongoing remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the

executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request a hearing before the commission on whether the determination should be modified or set aside by submitting a request not later than the 30th day after the receipt of the executive director's determination. If a hearing is requested, the commission shall initiate the hearing not later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with Chapter 2001, Government Code. The executive director's determination becomes unappealable on the 31st day after issuance if a hearing is not requested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.187. PROPOSED REMEDIAL ACTION. (a) Within a reasonable time after the completion of the remedial investigation/feasibility study or other similar study, if required, the executive director shall select a proposed remedial action. After the selection of a proposed remedial action, the commission shall hold a public meeting to discuss the proposed action.

(b) The commission shall publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. The notice shall provide information regarding the proposed remedial action and the date, time, and place of the meeting. The commission shall also mail the same information to each potentially responsible party by certified mail, return receipt requested, at the party's last known address at least 30 days before the public meeting. Contemporaneously with the issuance of notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for



inspection and copying during regular business hours. Nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party.

(c) The public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility and the identification of additional potentially responsible parties. Those in attendance may comment on the proposed remedial action, and the executive director may revise the proposed remedial action in light of the presentations.

(d) After the public meeting on the proposed remedial action, the commission shall provide all identified potentially responsible parties an opportunity to fund or perform the proposed remedial action. Not later than the 60th day after the date of the public meeting, the potentially responsible parties may make a good faith offer to fund or perform the proposed remedial action. If a good faith offer is made by all or some of the potentially responsible parties within this period, those parties have an additional 60 days to negotiate an agreed administrative order from the commission, which shall include a scope of work. The commission may not require an admission of liability in the agreed administrative order.

(e) To encourage potentially responsible parties to perform the remedial action, costs for commission oversight of the remedial action may not be assessed against those parties who fund or perform the remedial action. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility may be assessed up to the full costs for commission oversight of the remedial action. If all potentially responsible parties conduct or fund the remedial action, all commission oversight costs shall be paid from the hazardous waste disposal fee fund. Participation in the remedial action does not relieve those who did not conduct or fund the remedial investigation/feasibility study or other similar study approved by the executive director from paying their portion of the oversight costs of that phase of the remediation.

(f) The executive director may authorize a potentially responsible party to conduct a partial remedial action at a portion of the facility if after notice and opportunity for comment to all

other potentially responsible parties the executive director determines that the release or threatened release is divisible. In this subchapter, "divisible" means that the hazardous substance released or threatened to be released is capable of being managed separately under the remedial action plan. A determination of divisibility by the executive director does not have res judicata or collateral estoppel effect on a potentially responsible party's ultimate liability for remediation of the facility under Subchapter G or I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. (a) The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

(b) The commission may not name a land bank established under Chapter 379C, Local Government Code, as a responsible party for an enforcement action or require the land bank to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the land bank and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter:

(A) appear to originate from an up-gradient, off-site source that is not owned or operated by the land bank; or

(B) appear to have been present on the site before the land bank purchased the site; and

(2) the land bank could not have reasonably known about the contaminants at the time the land bank purchased the site.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 11.01, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 1, eff. September 1, 2007.

Sec. 361.188. FINAL ADMINISTRATIVE ORDER. (a) After consideration of all good faith offers to perform a remedial action, the commission shall issue a final administrative order that must:

(1) list the facility on the state registry, thus determining that the facility poses an imminent and substantial endangerment to public health and safety or the environment;

(2) specify the appropriate land use for purposes of selecting the appropriate remedial action;

(3) specify the selected remedial action;

(4) list the parties determined to be responsible for remediating the facility;

(5) make findings of fact describing actions voluntarily undertaken by responsible parties;

(6) order the responsible parties to remediate the facility and, if appropriate, reimburse the hazardous waste disposal fee fund for remedial investigation/feasibility study and remediation costs;

(7) establish a schedule for completion of the remedial action;

(8) state any determination of divisibility of responsible party liability; and

(9) give notice of the duties and restrictions imposed by Section 361.190.

(b) The provisions in Subchapters I, K, and L relating to administrative orders apply to orders issued under this section.

(c) If a potentially responsible party is newly identified after a final administrative order under Subsection (a) has been issued by the commission, that party has 60 days to negotiate an amendment to the existing order. The commission is not prohibited

from issuing a separate order for the newly identified potentially responsible party if the commission determines that the circumstances warrant a separate order. The responsible parties identified in the order issued under Subsection (a) shall be allowed to comment on the issuance of a separate order for the newly identified potentially responsible party.

(d) Within a reasonable period after a determination has been made, the commission shall file or cause to be filed in the real property records of the county in which the facility is located an affidavit or notice stating that the facility has been listed on or deleted from the state registry or is no longer proposed for listing on the state registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.189. DELETIONS FROM REGISTRY. (a) The executive director or an owner or operator or other named responsible party of a facility listed or to be listed on the state registry may request the commission to delete the facility from the state registry, modify the facility's priority within the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission may by rule require.

(b) The commission by rule shall establish procedures, including public meetings, for review of requests submitted under this section.

(c) If the commission deletes a facility from the state registry because the cleanup of the facility is being addressed under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, the facility automatically reverts to the status the facility had immediately before the facility was deleted from the registry on the date of the executive director's determination that the cleanup of the facility is not being addressed adequately. A public meeting is not required for an action under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.190. CHANGE IN USE OF LISTED FACILITY. (a) After the listing of a facility on the state registry, a person may not substantially change the manner in which the facility is used without notifying the executive director and receiving written approval of the executive director for the change.

(b) A substantial change in use shall be defined by rule and shall include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) The notice must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use.

(d) The executive director shall approve or disapprove the proposed action within 60 days after the date of receipt of the notice of proposed change in use. The executive director may not approve the proposed change in use if the new use will significantly interfere with a proposed, ongoing, or completed remedial action program at a facility or expose the public health and safety or the environment to a significantly increased threat of harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.191. IMMEDIATE REMOVAL. (a) If the commission, after investigation, finds that there exists a release or threatened release of a hazardous substance at a facility that is causing irreversible or irreparable harm to the public health and safety or the environment and that the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative

order, the commission may, with the funds available to the commission from the hazardous waste disposal fee fund, undertake immediate removal action at the facility to alleviate the harm.

(b) After the immediate danger of irreversible or irreparable harm has been alleviated, the commission shall proceed under this subchapter.

(c) Findings required under this section must be in writing and may be made ex parte by the commission subject to judicial review under the substantial evidence rule as provided by Chapter 2001, Government Code.

(d) The reasonable expenses of any immediate removal action taken by the commission may be recoverable from the persons described in Subchapter G or I, and the state may seek to recover the reasonable expenses in any court of appropriate jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.192. REMEDIAL ACTION BY COMMISSION. (a) If a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement the remedial action program for the facility.

(b) The reasonable expenses of implementing the remedial action program by the commission shall be paid by the persons to whom the order was issued and shall be recoverable under Section 361.197.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.193. GOAL OF REMEDIAL ACTION. (a) The goal of any remedial action is the elimination of the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of a hazardous substance at a facility. The appropriate extent of the remedial action at any

particular facility shall be determined by the commission's selection of the remedial alternative that the commission determines is the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.

(b) In considering the appropriate remedial action program at a particular facility, the commission may approve a program that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criterion, or limitation, as required by state or local law, if the commission finds that:

(1) the remedial action selected is only part of a total remedial action that will attain that level or standard of control when completed;

(2) compliance with the requirement at that facility will result in greater risk to public health and safety or the environment than alternative options;

(3) compliance with the requirement is technically impracticable from an engineering perspective;

(4) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criterion, or limitation through use of another method or approach;

(5) with respect to a local standard, requirement, criterion, or limitation, the locality has not consistently applied or demonstrated the intention to consistently apply the standard, requirement, criterion, or limitation in similar circumstances of other remedial actions within the locality; or

(6) with respect to an action using solely state funds, selection of a remedial action that attains those levels or standards of control will not provide a balance between the need for protection of public health and safety or the environment at the facility and the availability of state funds to respond to other sites that present a threat to public health and safety or the environment, taking into consideration the relative immediacy of the threats.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.194. LIEN. (a) In addition to all other remedies available to the state under this chapter or other law, all remediation costs for which a person is liable to the state constitute a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. This provision is cumulative of other remedies available to the state under this chapter.

(b) The lien imposed by this section arises and attaches to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the costs is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the costs;

(2) a description of the real property that is subject to or affected by the remediation action for the costs or claims; and

(3) the amount of the costs and the balance due.

(d) The county clerk shall record the affidavit in records kept



for that purpose and shall index the affidavit under the names of the persons liable for the costs.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action or has knowledge that the state has incurred clean-up costs.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by

having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 2, eff. Sept. 1, 2003.

Sec. 361.195. PAYMENTS FROM HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) Money for actions taken or to be taken by the commission in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous and solid waste remediation fee account. These payments include any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water, and groundwater done on behalf of a state agency and the costs of investigations to identify and locate potentially responsible parties.

(b) The commission shall seek remediation of facilities by potentially responsible parties before expenditure of federal or state funds for the remediations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 44, eff. Sept. 1, 1997.

## Sec. 361.196. REMEDIATION: PERMITS NOT REQUIRED; LIABILITY.

(a) Potentially responsible parties shall coordinate with ongoing federal and state hazardous waste programs although a state or local permit may not be required for any removal or remedial action conducted on site.

(b) Subject to Section 361.193, the state may enforce any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be required to conform if a permit were required.

(c) An action taken by the person to contain or remove a release or threatened release in accordance with an approved remedial action plan may not be construed as an admission of liability for the release or threatened release.

(d) A person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan is not liable for any additional remediation costs at the facility resulting solely from acts or omissions of the person in rendering the assistance in compliance with the approvals required by this section, unless the remediation costs were caused by the person's gross negligence or wilful misconduct.

(e) Except as specifically provided by this section, these provisions do not expand or diminish the common law tort liability, if any, of private parties participating in a remediation action for civil damages to third parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.197. COST RECOVERY. (a) The commission shall file a cost recovery action against all responsible parties who have not complied with the terms of an administrative order issued under Section 361.188. The commission shall file the cost recovery action no later than one year after all remedial action has been completed.

(b) The state may seek a judgment against the noncompliant parties for the total amount of the cost of the remedial investigation and feasibility study, the remedial design, and the remedial action, including costs of any necessary studies and oversight costs, minus the amount agreed to be paid or expended by

any other responsible parties under an order issued under Section 361.185 or 361.188.

(c) The action may also include a plea seeking civil penalties for noncompliance with the commission's administrative order and a claim for up to triple the state's costs if the responsible party's defenses are determined by the court to be unreasonable, frivolous, or without foundation.

(d) The commission shall file a cost recovery action against each responsible party for the total costs of an action taken under Section 361.133(c)(1), (2), (3), (5), or (6) or Section 361.133(g).

(e) The commission may not file a cost recovery action under this section against an individual if the individual's only significant asset is a homestead that:

- (1) includes the facility subject to or affected by a remedial action;
- (2) is occupied by the individual as a home; and
- (3) has a fair market value of \$250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 1, eff. June 8, 1993; Acts 1995, 74th Leg., ch. 883, Sec. 4, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 3, eff. Sept. 1, 2003.

Sec. 361.199. MIXED FUNDING PROGRAM. The commission by rule shall adopt a mixed funding program in which available money from potentially responsible parties is combined with state or federal funds to clean up a facility in a timely manner. Use of the state or federal funds in a mixed funding approach does not preclude the state or federal government from seeking recovery of its costs from nonparticipating potentially responsible parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.200. SETTLEMENT. The commission shall assess and by rule may develop and implement a settlement program. Under the

program, the commission shall consider the advantages of developing a final settlement with potentially responsible parties that are responsible for response costs at a facility because of hazardous substances. The settlement program may include:

- (1) de minimis settlements;
- (2) covenants not to sue;
- (3) mixed funding; and
- (4) partial settlements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 10, eff. Sept. 1, 1997.

Sec. 361.201. FINANCIAL CAPABILITY AND FUNDING PRIORITY. (a) The commission may determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action. The commission by rule shall adopt the criteria for determination of financial capability.

(b) If no financially capable, potentially responsible parties exist for a facility, the commission shall issue an administrative order stating its determination that the facility constitutes an imminent and substantial endangerment and that there are no financially capable, potentially responsible parties. The commission shall then conduct its own remediation study and remedial action, using federal funds if available, or, if federal funds are not available, using state funds from the hazardous and solid waste remediation fee account.

(c) Generally, the remediation of listed facilities shall be achieved first by private party funding, second with the aid of federal funds, and third, if necessary, with state funds from the hazardous and solid waste remediation fee account.

(d) The commission shall determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action if the responsible party is an individual whose homestead includes the facility subject to or affected by a remedial action.

(e) The commission by rule shall adopt criteria for determining the financial capability of an individual under Subsection (d). The

rules must provide that the value of the individual's homestead may not be included in the total amount of the individual's assets if:

- (1) the individual is occupying the homestead as a home;
- and
- (2) the fair market value of the homestead is \$250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 45, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 4, eff. Sept. 1, 2003.

Sec. 361.202. DEADLINE EXTENSIONS. The executive director or the commission may extend any period specified in this section if considered appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

#### **SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT**

Sec. 361.271. PERSONS RESPONSIBLE FOR SOLID WASTE. (a) Unless otherwise defined in applicable statutes and rules, a person is responsible for solid waste if the person:

- (1) is any owner or operator of a solid waste facility;
- (2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;
- (3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:
  - (A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or
  - (B) the site to which the solid waste was transported that contains the solid waste; or
- (4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

- (b) A political subdivision, a land bank established under

Chapter 379C, Local Government Code, or an officer or employee of the political subdivision or land bank is not a person responsible for solid waste released or threatened to be released from a facility or at a site if:

(1) the political subdivision or land bank acquired ownership or control of the facility or site through a tax delinquency or if the subdivision acquired ownership or control of the facility or site through bankruptcy, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the political subdivision, land bank, officer, or employee did not cause or contribute to the release or threatened release of solid waste at the facility or site.

(c) A political subdivision that is in a county with a population of 3.3 million or more or is in a county adjacent to a county with a population of 3.3 million or more and that builds or installs a drainage project on a site of a solid waste facility is not a person responsible for solid waste released or threatened to be released from the facility or at a site of the facility if:

(1) the political subdivision acquired ownership or control of the facility or site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the plans for the drainage project have been submitted to and reviewed by the commission.

(d) A political subdivision that builds or installs a drainage project under Subsection (c) is not subject to civil or criminal liability arising from the building or installation of the drainage project. This subsection does not apply to an injury or property damage claim that results from an act or omission of the political subdivision constituting gross negligence, recklessness, or intentional misconduct.

(e) A fiduciary's responsibility for solid waste is subject to Subchapter T.

(f) A lender's responsibility for solid waste is subject to Subchapter U.

(g) A port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas

Constitution, is not a person responsible under this chapter for the release or threatened release of hazardous waste from a facility or at a site solely for its activities related to construction or maintenance of waterways to facilitate navigation if, in performing those activities:

- (1) the port authority or navigation district is acting by virtue of the authority's or district's function as sovereign;
  - (2) the port authority or navigation district requires that dredged materials be sampled and analyzed before placement or storage of those materials on land or submerged land; and
  - (3) the port authority or navigation district, after exercising due diligence, does not accept dredged materials that are hazardous waste.
- (h) Subsection (g) may not be construed to relieve a port authority or navigation district of liability if the port authority or navigation district causes or contributes to the generation of hazardous waste.
- (i) As used in Subsection (g), activities related to construction or maintenance of waterways to facilitate navigation include:

- (1) the dredging of materials from navigable waters or the banks of navigable waters;
- (2) the placement or storage of dredged materials on land or submerged land; and
- (3) the construction, operation, or maintenance of a placement area for dredged material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 159, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.67, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 34, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 589 (H.B. [1705](#)), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. [1742](#)), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 44, eff. September 1, 2011.



Sec. 361.272. ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. (a) The commission may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

(1) from a solid waste facility at which solid waste is stored, processed, or disposed of; or

(2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.

(b) An administrative order may be issued under this section to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

(1) be delivered to the persons identified by the order by certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.68, eff. Sept. 1, 1995.

Sec. 361.273. INJUNCTION AS ALTERNATIVE TO ADMINISTRATIVE ORDER. The commission may cause a civil suit for injunctive relief to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

(1) restrain a person responsible for solid waste under

Section 361.271 from allowing or continuing the release or threatened release; and

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995.

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the commission. An emergency administrative order may be issued under Subchapter L, Chapter 5, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 35, eff. Sept. 1, 1997.

Sec. 361.275. DEFENSES. (a) A person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third person; or
- (4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

- (1) is an employee or agent of the defendant; or
- (2) has a direct or indirect contractual relationship with

the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

(A) the defendant has satisfied Subsection (b);

(B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.276. APPORTIONMENT OF LIABILITY. (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.277. EFFECT OF SETTLEMENT AGREEMENT WITH STATE. (a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) A person who enters a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F is released from liability to a person described by Section 361.344(a) for cost recovery, contribution, or indemnity under Section 361.344 regarding a matter addressed in the settlement agreement.

(c) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(d) Notwithstanding Subsection (c), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 12, eff. Sept. 1, 1997.

Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR. (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

- (1) identifying a hazardous or solid waste site;
- (2) developing a plan to clean up the site; or
- (3) supervising or implementing the plan to clean up the

site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.279. CONTRACTS WITH STATE. A state agency contracting for services or products shall consider whether the person proposing

to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION**

Sec. 361.301. EMERGENCY ORDER. The commission may issue an emergency mandatory, permissive, or prohibitory order concerning an activity of solid waste management under its jurisdiction under Section 5.512, Water Code, even if the activity is not covered by a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.70, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 36, eff. Sept. 1, 1997.

#### **SUBCHAPTER K. APPEALS; JOINDER OF PARTIES**

Sec. 361.321. APPEALS. (a) A person affected by a ruling, order, decision, or other act of the commission may appeal the action by filing a petition in a district court of Travis County.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) Except as provided by Section 361.322(a), the petition must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause

for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.71, eff. Sept. 1, 1995.

Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES. (a) Any person subject to an administrative order under Section 361.272 may appeal the order by filing a petition before the 46th day after the date of receipt, hand delivery, or publication service of the order.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of a motion for rehearing under Chapter 2001, Government Code is not a prerequisite for an appeal of the order.

(d) The person appealing the order must join the commission as a party and may join as parties any other person named as a responsible party in the administrative order and any other person who is or may be liable for the elimination of the actual or threatened release of solid waste or hazardous substances governed by the administrative order.

(e) The filing of the petition does not prevent the commission from proceeding with the remedial action program under Subchapter F unless the court enjoins the remedial action under its general equity jurisdiction.

(f) The administrative order is final as to a nonappealing party on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(g) The district court shall uphold the administrative order if the commission proves by a preponderance of the evidence that:

(1) there is an actual or threatened release of solid waste or hazardous substances that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(h) If the appropriateness of the selected remedial action is contested in the appeal of the administrative order, the remedial action shall be upheld unless the court determines that the remedy is arbitrary or unreasonable.

(i) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(j) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the commission or other party to comply with the order.

(k) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.72, eff. Sept. 1, 1995.

Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join



a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER L. COST RECOVERY**

Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

- (1) an appeal of an administrative order issued under Section 361.272 or Section 361.188;
- (2) an action to enforce such an administrative order;
- (3) a civil suit seeking injunctive relief under Section 361.273; or
- (4) a cost recovery suit under Section 361.197.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) All such costs recovered by the state under Subchapter F shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste disposal fee fund. All other costs recovered by the state under Sections 361.271 through 361.277 shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste generation and facility fees fund.

(d) If an appeal or third party claim is found by the court to be frivolous, unreasonable, or without foundation, the court may assess damages against the party bringing the appeal or third party claim in an amount not to exceed triple the costs incurred by the state or the third party defendant, including reasonable attorney's fees, reasonable costs of preparing and providing witnesses, and reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 2, eff. June 8, 1993.

Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

- (1) attorney's fees;
- (2) costs to prepare and provide witnesses; and
- (3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.343. APPORTIONMENT OF COSTS. (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

- (1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;
- (2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;
- (3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and
- (4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) In apportioning costs under Subsection (a), the court shall credit against a responsible party's share of the costs of

eliminating a release or threatened release of solid waste the party's expenditures related to the cleanup at issue if the commission or the executive director approves the cleanup. If the expenditures were made before the property was proposed to be listed on the state registry and the commission or the executive director approves the cleanup, the court shall also reduce in an equitable and just manner the party's proportionate share of the costs.

(c) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 13, eff. Sept. 1, 1997.

Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY.

(a) A person who conducts a removal or remedial action that is approved by the commission and is necessary to address a release or threatened release may bring suit in a district court to recover the reasonable and necessary costs of that action and other costs as the court, in its discretion, considers reasonable. This right is in addition to the right to file an action for contribution, indemnity, or both in an appeal proceeding or in an action brought by the attorney general.

(b) Venue for the suit is:

(1) in the county in which the release or threatened release is or was located; or

(2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

(1) of the existence of the release or threatened release; and

(2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 14, eff. Sept. 1, 1997.

Sec. 361.345. CREATION OF RIGHTS. Subchapter I and Section 361.344 and the enforcement by the commission of that subchapter and section do not:

- (1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or
- (2) change common law or a rule of decision except as limited by this chapter to actions by the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.73, eff. Sept. 1, 1995.

#### **SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS**

Sec. 361.401. DEFINITIONS. In this subchapter:

- (1) "Disposal facility" means a site or area at which a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed of, or placed or otherwise come to be located that no longer receives hazardous substances, pollutants, and contaminants.
- (2) "Fund" means the hazardous waste disposal fee fund.
- (3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003.
- (4) "Pollutant" or "contaminant" means any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from

the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(5) "Removal" means:

(A) cleaning up or removing released hazardous substances, pollutants, or contaminants from the environment;

(B) taking necessary action in the event of the threat of release of hazardous substances, pollutants, or contaminants into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous substances, pollutants, or contaminants;

(D) disposing of removed material;

(E) erecting security fencing or taking other measures to limit access;

(F) providing alternate water supplies;

(G) temporarily evacuating and housing threatened individuals not otherwise provided for;

(H) taking action under Section 104(b) of the environmental response law;

(I) providing any emergency assistance under the Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); and

(J) taking other action as may be necessary to prevent, minimize, or mitigate damage to the public health and safety or to the environment that may otherwise result from a release or threat of release.

(6) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant, or contaminant into the environment to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not migrate to cause substantial danger to present or future public health and safety or the environment.

The term:

(A) includes:

(i) actions at the location of the release,

including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants, contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collections of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those reactions protect the public health and safety or the environment; and

(ii) the costs of permanent relocation of residents and businesses and community facilities where the president of the United States determines that alone or in combination with other measures this relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous substances, pollutants, or contaminants or may otherwise be necessary to protect the public health or safety; but

(B) does not include off-site transport of hazardous substances or the storage, treatment, destruction, or secure disposition off site of the hazardous substances, pollutants, contaminants, or contaminated materials unless the president of the United States determines that those actions:

(i) are more cost-effective than other remedial actions;

(ii) will create new capacity to manage, in compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.), hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect the public health and safety or the environment from a present or potential risk that may be created by further exposure to the continued presence of those substances, pollutants, contaminants, or materials.

(7) "Response" means removal and remedial action.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.21, eff. June 7, 1991.

Sec. 361.402. COMMISSION DUTIES AND POWERS. (a) The

commission shall:

(1) administer this subchapter; and  
(2) cooperate with municipalities and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this section and the environmental response law.

(b) The commission may:

(1) enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law;

(2) after notice and hearing, authorize the executive director to enter into contracts and cooperative agreements on behalf of the commission under Subdivision (1) under terms and conditions stated in the commission's order; and

(3) when acting under a cooperative agreement with the federal government under Subdivision (1), undertake the enforcement and remedial actions authorized under the environmental response law as may be reasonably necessary, in lieu of or in conjunction with actions by the federal government.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.403. TERMS AND CONDITIONS OF AGREEMENTS; COSTS. (a) If the commission enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the commission shall include in the contract or agreement terms and conditions to:

(1) assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous

substances, pollutants, or contaminants; and

(3) assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

(b) A contract entered into with the federal government under Section 104(d)(1) of the environmental response law is subject to the same cost-sharing requirements provided for contracts in Subsection (a)(3).

(c) The state's share of reasonable response costs shall be paid from the fund.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.404. COOPERATION WITH FEDERAL GOVERNMENT. (a) Before entering into a contract or cooperative agreement under Section 361.402, the commission shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

(b) The commission shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.405. INDEMNIFICATION OF ENGINEER OR CONTRACTOR. (a) Notwithstanding any other law or rule, the commission may agree in a contract retaining an engineer or contractor to perform a program of removal, remedial action, or cleanup of a hazardous substance in connection with a contract or cooperative agreement under Section 361.402 to indemnify the engineer or contractor against any claim or



liability arising from an actual or threatened release of a hazardous substance that occurs during the performance of any work, including:

- (1) damages arising from economic loss, personal injury, property damages, or death;
- (2) costs and expenses, including the cost of defense of a lawsuit brought against the engineer or contractor; and
- (3) claims by third parties for indemnification, contribution, or damages for economic loss, personal injury, property damages, or death.

(b) In determining whether to contract to indemnify an engineer or contractor under this section, the commission shall consider the availability of insurance to the engineer or contractor for the claims and liabilities against which the commission may indemnify the engineer or contractor under this section on the date the engineer or contractor enters into a contract to perform services covered by this section. The commission may not contract to indemnify an engineer or contractor under this section if the engineer or contractor cannot demonstrate that insurance is unavailable at a reasonable cost or if another engineer or contractor submitting a comparable proposal demonstrates that insurance is available at a reasonable cost.

(c) The commission is not obligated to award a contract if it determines that adequate liability insurance is not available to an engineer or contractor and that the award of the contract is not in the public interest.

(d) The commission may not contract to indemnify an engineer or contractor under this section unless the federal government agrees in a contract or cooperative agreement to indemnify in turn the commission under Section 119 of the environmental response law. The commission's decision to contract or not to contract to indemnify an engineer or contractor may be made as an executive act without an adjudicative public hearing and is not subject to judicial review.

(e) An engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 that results in an actual or threatened release of hazardous substance is not liable under Section 361.221, 361.223 through 361.229, or 361.252 for an act or a failure to act during the performance of the contract. This subsection does not in any way limit or otherwise affect the liability of an engineer or contractor in any other action.

(f) Subsections (a) and (e) do not apply to a grossly negligent act or omission or to wilful misconduct of an engineer or contractor during the performance of a contract. Notwithstanding any other law, an engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 is liable for a grossly negligent act or omission or for wilful misconduct that results in an actual or threatened release of a hazardous substance in violation of Subchapter G or I, or Section 361.252, only to the extent that the act, omission, or misconduct caused the violation.

(g) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with the identification of a site containing a hazardous substance, the development of a plan of response to the site, or the supervision or performance of the response to the site.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

#### **SUBCHAPTER N. WASTE REDUCTION PROGRAMS; DISPOSAL FEES**

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that is put to beneficial reuse as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of determining the total equivalent costs and benefits of using products

over their lifetimes or over any other period of time. These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the commission described in Section 361.427.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes:

(A) the composting process if the compost material is put to beneficial reuse as defined by the commission; and

(B) the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0301, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 4.01, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.74, eff. Sept. 1, 1995.

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce by January 1, 1994, the amount of municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) The commission shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured. The rules may take into consideration those ongoing community source reduction and recycling programs where substantial progress has already been achieved. The commission may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) For the purpose of measuring progress toward the municipal solid waste reduction goal, the commission shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the commission shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.

(e) Before January 1, 1994, the commission shall determine whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:

- (1) affect the state's disposal capacity;
- (2) affect the economy of the state;
- (3) affect local governments; and
- (4) be accepted and adhered to by the citizens of the

state.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.02, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.75, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.423. RECYCLING MARKET DEVELOPMENT IMPLEMENTATION PROGRAM. (a) The commission, the comptroller, and other consenting state agencies as appropriate shall regularly coordinate the recycling activities of state agencies and shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The commission and the comptroller, on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze or take into consideration the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

- (H) the state recycling goal;
  - (I) public-private partnerships;
  - (J) research and development;
  - (K) government procurement policies;
  - (L) educational programs for the public, corporate and regulated communities, and government entities; and
  - (M) public health and safety regulatory policies;
- (4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;
- (5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and
- (6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the commission and the comptroller may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) In carrying out this section, the commission and the comptroller shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.76, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 80, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1122 (H.B. 2466), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.91, eff. September 1, 2007.

Sec. 361.425. GOVERNMENTAL ENTITY RECYCLING. (a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school

district, or special district shall:

(1) in cooperation with the comptroller or the commission establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(b) The commission by order shall exempt a school district or a municipality with a population of less than 5,000 from compliance with this section if the commission finds that compliance would work a hardship on the district or the municipality. The commission shall adopt rules for administering this subsection.

(c) Expired.

(d) In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.03, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.77, eff. Sept. 1, 1995.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.92, eff. September 1, 2007.

Sec. 361.426. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED PRODUCTS. (a) A state agency, state court, or judicial agency not subject to Subtitle D, Title 10, Government Code, a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable



specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;

(2) encourage the use of products made of recycled materials; and

(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The commission by order shall exempt a school district or a municipality with a population of less than 5,000 from compliance with this section if the commission finds that compliance would work a hardship on the district or the municipality. The commission shall adopt rules for administering this subsection.

(e) Expired.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.78, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997.

Sec. 361.427. SPECIFICATIONS FOR RECYCLED PRODUCTS. (a) The commission, in consultation with the comptroller, shall promulgate rules to establish guidelines which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste.

(c) The guidelines established under this section shall be classified by types of products.

(d) The commission's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Sec. 3259 et

seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.79, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.93, eff. September 1, 2007.

Sec. 361.428. COMPOSTING PROGRAM. (a) The commission shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.

(d) A person may not commercially compost grease trap waste, as defined by the commission, unless the person has first obtained a permit for composting grease trap waste issued by the commission under this section on or after September 1, 2003.

(e) The permit to compost grease trap waste must meet the minimum standards of a permit issued under rules adopted under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.13, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 596, Sec. 1, eff. June 20, 2003.

Sec. 361.429. HOUSEHOLD HAZARDOUS WASTE. The commission shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for municipalities, counties, or regions. The commission's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.80, eff. Sept. 1, 1995.

Sec. 361.430. NEWSPRINT RECYCLING PROGRAM. (a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The commission shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

- (1) 10 percent by the end of the calendar year 1993;
- (2) 20 percent by the end of the calendar year 1997; and
- (3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the executive director which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(2) The executive director shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the executive director determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the commission may adopt mandatory enforcement measures.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.81, eff. Sept. 1, 1995.

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.06, eff. Sept. 1, 2001.

#### **SUBCHAPTER O. LEAD-ACID BATTERIES**

Sec. 361.451. LAND DISPOSAL PROHIBITED. (a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

- (1) a battery retailer or wholesaler;
- (2) a secondary lead smelter; or
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

- (1) a battery wholesaler or a secondary lead smelter, or an agent thereof;

(2) a battery manufacturer for delivery to a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

(1) accept from each customer, if offered, at least one but not more than three lead-acid batteries for recycling; and

(2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling."

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 361.453. INSPECTION OF BATTERY RETAILERS. The commission shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the commission may inspect any place, building, or premises governed by Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to an administrative or a civil penalty under Chapter 7, Water Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.82, eff. Sept. 1,  
1995; Acts 1997, 75th Leg., ch. 1072, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.15, eff. Aug. 30,  
1993.

#### **SUBCHAPTER Q. POLLUTION PREVENTION**

Sec. 361.501. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled

by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.431 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.



Sec. 361.502. POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.432 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991.

Sec. 361.503. COMMISSION PLANS. (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, the commission by rule shall, to the maximum extent that is technologically and economically feasible:

(1) develop plans to reduce the release of pollutants or contaminants into the air;

(2) develop plans to reduce the release of pollutants or contaminants into water; and

(3) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of pollutants and contaminants using source reduction and waste minimization.

(b) The commission by rule shall develop a list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.433 and amended by Acts 1991, 72nd Leg., 1st

C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.84, eff. Sept. 1, 1995.

Sec. 361.504. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

- (1) all large-quantity generators of hazardous waste;
- (2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and
- (3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.503(b).

(b) The commission by rule shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission, and until that date this subchapter applies only to those persons designated by rule of the commission.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.434 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.85, eff. Sept. 1, 1995.

Sec. 361.505. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS.

(a) Persons identified under Section 361.504(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

- (1) an initial survey that identifies:
  - (A) for facilities subject to Section 361.504(a)(1), activities that generate hazardous waste; and

(B) for facilities subject to Section 361.504(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.503(b);

(2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated;

(5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

(10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.504(a)(2).

(d) The commission shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.435 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.86, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Sec. 361.506. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission an annual report and a current executive summary according to any schedule developed under Section 361.504.

(b) The annual report shall comply with rules adopted by the commission. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.504(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.504(a)(3), the amount of the

release of pollutants or contaminants designated under Section 361.503(b) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by the commission; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.436 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.87, eff. Sept. 1, 1995.

Sec. 361.5061. PLANNING AND REPORTING REQUIREMENTS: INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education that is required to develop a source reduction and waste minimization plan under this subchapter for more than one facility may:

(1) develop and submit one plan that covers all of the facilities; and

(2) submit one annual report and one executive summary under Section 361.506 that covers all of the facilities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 67, eff. September 1, 2013.

Sec. 361.507. ADMINISTRATIVE COMPLETENESS. (a) The commission may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.504, 361.505, or 361.506, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.504 and 361.505 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.506 is a violation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.437 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.88, eff. Sept. 1, 1995.

Sec. 361.508. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 552, Government Code.

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or an employee of the commission does not affect its status as a trade secret.

(e) Information classified by the commission as confidential under this section is not a public record for purposes of Chapter 552, Government Code, and may not be used in a public hearing or

disclosed to a person outside the commission unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.438 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.89, eff. Sept. 1, 1995.

Sec. 361.509. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and

waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by rules of the commission for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of



the permit.

(d) The commission shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.439 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.90, eff. Sept. 1, 1995.

#### **SUBCHAPTER R. USE OF LAND OVER MUNICIPAL SOLID WASTE LANDFILLS**

Sec. 361.531. DEFINITIONS. In this subchapter:

(1) "Develop" or "development" means an activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use or occupation of people for a commercial or public purpose or to the construction of residences for three or more families.

(2) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives municipal solid waste or other solid wastes approved under this chapter and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 C.F.R. Section 257.2.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.532. PERMIT REQUIRED FOR DEVELOPMENT OF CERTAIN LAND.

(a) The owner or lessee of land located over any part of a closed municipal solid waste landfill unit may not develop the land unless the owner or lessee holds a permit for the development issued under this subchapter.

(b) This subchapter does not apply to an activity associated with solid waste disposal that is approved by the commission.

(c) The commission shall charge any applicant for a permit under this subchapter the actual cost of reviewing any application prior to the issuance of a permit.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.92, eff. Sept. 1, 1995.

Sec. 361.533. APPLICATION FOR DEVELOPMENT PERMIT. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill facility may apply for a permit to develop the land. The owner or lessee shall submit to the executive director an application for a permit on forms prescribed by the commission not later than 45 days before the development begins. The application must include a registered professional engineer's verified certification that the proposed development is necessary to reduce a potential threat to public health or the environment or that the proposed development will not increase or create a potential threat to public health or the environment. The certification must indicate the registered professional engineer's determination of whether the proposed development will damage the integrity or function of any component of the landfill's:

- (1) final cover;
- (2) containment systems;
- (3) monitoring systems; or
- (4) liners.

(b) The engineer's certification required under Subsection (a) must include documentation of all studies or data on which the engineer relied.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.534. PERMIT PUBLIC MEETING. (a) The commission may hold a public meeting on an application under this subchapter.

(b) The commission shall hold a public meeting on an application under this subchapter:

(1) on the request of a member of the legislature who represents the general area in which the development is proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed development.

(c) The commission by mail shall notify the applicant of the date, time, and place of the public meeting. The commission shall

require the applicant to publish notice of the public meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the public meeting.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 5, eff. September 1, 2005.

Sec. 361.535. ISSUANCE OF PERMIT; PERMIT CONDITIONS. (a) The commission may issue a permit for the development of land over a closed municipal solid waste landfill facility only if the commission finds that the proposed development will not increase or create a potential threat to public health or the environment.

(b) The commission may impose conditions on a permit that are designed to prevent a threat to public health or the environment. Conditions may include:

(1) restrictions on building types, construction methods, pilings, boring, or digging;

(2) requiring ventilation, emissions or water quality monitoring devices, soil testing, warnings to subsequent owners or lessees, maintenance of structures or landfill containment, or the placement of additional soil layers or building pads; or

(3) any other conditions the commission finds to be reasonable and necessary to protect the public health or the environment or to ensure compliance with rules or conditions adopted or imposed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.536. REQUIREMENTS FOR STRUCTURES ON CLOSED MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) The owner or lessee of an existing or new structure that overlies a closed municipal solid waste landfill facility shall install automatic methane gas sensors approved by the commission and designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than one percent.

(b) In the development of land that overlies a closed municipal solid waste landfill facility, a person may not, unless approved by the commission:

- (1) drive piling into or through the final cover or a liner;
- (2) bore through or otherwise penetrate the final cover or a liner; or
- (3) construct an enclosed area under the natural grade of the land or under the grade of the final cover of the closed landfill.

(c) The owner or lessee of a structure built over a closed municipal solid waste landfill facility shall modify the structure as is necessary to comply with commission rules for a new structure that overlies a landfill to minimize the effects of, or to prevent, gas accumulation. The commission shall adopt rules to allow the owner or lessee of a structure a reasonable amount of time to make required modifications.

(d) The commission by rule shall require plans for a new structure over a closed municipal solid waste landfill facility to prevent or minimize the effects of harmful gas accumulation. At a minimum, the commission shall require:

- (1) ventilation or active gas collection systems;
- (2) a low gas-permeable membrane and a vented, permeable layer of an open-graded, clean aggregate material installed between the area below the slab for the structure and the soil of the final cover; and
- (3) automatic methane gas sensors that will sound an audible alarm if the sensor detects a methane gas volumetric concentration of greater than one percent installed:
  - (A) within the venting pipe or permeable layer; and
  - (B) inside the structure.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.537. LEASE RESTRICTION; NOTICE TO LESSEE. A person may not lease or offer for lease land that overlies a closed municipal solid waste landfill facility unless:

- (1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the land and any development on the land into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any permit issued for the land under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.538. SOIL TEST REQUIRED BEFORE DEVELOPMENT OF CERTAIN LAND. (a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person has conducted soil tests, in accordance with commission rules, to determine whether any part of the tract overlies a closed municipal solid waste landfill facility.

(b) Tests under this section must be conducted by a registered professional engineer.

(c) If an engineer who conducts a test under this section determines that part of the tract overlies a closed municipal solid waste landfill facility, the engineer shall notify the following persons of the determination:

(1) each owner and each lessee of the tract;

(2) the commission; and

(3) any local governmental official with the authority to disapprove an application for development.

(d) A local government official who receives a notice under this section shall prepare a written notice stating the legal description of the portion of the tract that overlies a closed municipal solid waste landfill facility, the current owner of the tract, notice of the tract's former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The official shall file for record the notice in the real property records in the county where the tract is located.

(e) The owner or lessee of land for which a test is done under this section shall send the test results to the executive director not later than the 30th day before the development begins.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.539. NOTICE TO BUYERS, LESSEES, AND OCCUPANTS. (a)

An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.

(b) An owner of land that overlies a closed municipal solid waste landfill facility shall notify each lessee and each occupant of a structure that overlies the site of:

- (1) the land's former use as a landfill; and
- (2) the structural controls in place to minimize potential future danger posed by the landfill.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

**Subchapter S, Medical Waste; Criminal Penalties, consisting of Secs. 361.560 to 361.567, was added by Acts 1995, 74th Leg., ch. 448, Sec. 1.**

**For another Subchapter S, Voluntary Cleanup Program, added by Acts 1995, 74th Leg., ch. 986, Sec. 1, see Sec. 361.601 et seq., post.**

**SUBCHAPTER S. MEDICAL WASTE; CRIMINAL PENALTIES**

Sec. 361.560. DEFINITIONS. In this subchapter:

- (1), (2) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.
- (3) "Medical waste" includes animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care-related facilities as those terms are defined in 25 TAC Section 1.132 (Tex. Dept. of Health, Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Section 252.001(6), Agriculture Code. The term does not include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.
- (4) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 185, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.561. RADIOACTIVE MEDICAL WASTE. Disposal of radioactive medical waste is governed by Chapter 401.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995.

**Subchapter S, Voluntary Cleanup Program, consisting of Secs. 361.601 to 361.613, was added by Acts 1995, 74th Leg., ch. 986, Sec. 1.**

**For another Subchapter S, Medical Waste; Criminal Penalties, added by Acts 1995, 74th Leg., ch. 448, Sec. 1, see Sec. 361.560 et seq., ante.**

**SUBCHAPTER S. VOLUNTARY CLEANUP PROGRAM**

Sec. 361.601. DEFINITIONS. In this subchapter:

- (1) "Contaminant" includes:
  - (A) solid waste;
  - (B) hazardous waste;
  - (C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;
  - (D) a pollutant as defined in Section 26.001, Water Code; and
  - (E) a hazardous substance:
    - (i) as defined in Section 361.003; or
    - (ii) subject to Sections 26.261-26.268, Water Code.
- (2) "Environmental assessment" means the assessment described by Section 361.604.
- (3) "Response action" means the cleanup or removal of a hazardous substance or contaminant from the environment, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.
- (4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.602. PURPOSE. The purpose of the voluntary cleanup program is to provide incentive to remediate property by removing liability of lenders and future landowners. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.603. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site is eligible for participation in the voluntary cleanup program except the portion of a site that is subject to a commission permit or order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 361.606; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Text of subsec. (c) effective upon agreement with United States Environmental Protection Agency

(c) Notwithstanding Subsection (a), a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. An administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 2; Acts 1997, 75th Leg., ch. 1418, Sec. 1.

Text of section effective upon agreement with United States Environmental Protection Agency

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY.

(a) A person who purchased a site before September 1, 1995, is



released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate before the purchase date, except for releases or consequences that the person contributed to or caused, if:

(1) the person did not operate the site, or any portion of the site, before the purchase date; and

(2) another person that is a responsible party under Section 361.271 or 361.275(g) successfully completes a voluntary cleanup of the site under this subchapter.

(b) A person described by Subsection (a)(2):

(1) remains liable to the state for any contamination that was released at the site before the date the certificate is issued; and

(2) is not liable to the state for any contamination that was released at the site after the date the certificate is issued unless the person:

(A) contributes to or causes the release of contamination; or

(B) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1997, 75th Leg., ch. 855, Sec. 3; Acts 1997, 75th Leg., ch. 1418, Sec. 2.

Sec. 361.604. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

Text of subsec. (b) effective until agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup; and

- (ii) the site;
  - (B) other background information requested by the executive director; and
  - (C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;
- (3) be accompanied by an application fee of \$1,000; and
  - (4) be submitted according to schedules set by commission rule.

Text of subsec. (b) effective upon agreement with United States Environmental Protection Agency

- (b) An application submitted under this section must:
  - (1) be on a form provided by the executive director;
  - (2) contain:
    - (A) general information concerning:
      - (i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;
      - (ii) the site; and
      - (iii) whether the voluntary cleanup is subject to Section 361.6035;
    - (B) other background information requested by the executive director; and
    - (C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;
  - (3) be accompanied by an application fee of \$1,000; and
  - (4) be submitted according to schedules set by commission rule.
- (c) The environmental assessment required by Subsection (b) must include:
  - (1) a legal description of the site;
  - (2) a description of the physical characteristics of the site;
  - (3) the operational history of the site to the extent that history is known by the applicant;
  - (4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 333, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 4; Acts 1997, 75th Leg., ch. 1418, Sec. 3.

Sec. 361.605. REJECTION OF APPLICATION. (a) The executive director may reject an application submitted under Section 361.604 if:

(1) an administrative, state, or federal enforcement action is pending that concerns the remediation of the hazardous substance or contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is not complete or accurate; or

(4) the site is ineligible under Section 361.603.

(b) If an application is rejected because it is not complete or accurate, the executive director, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the executive director issues notice that the application has been rejected.

(c) If the executive director rejects the application, the executive director shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to

resubmit an application.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 855, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.606. VOLUNTARY CLEANUP AGREEMENT. (a) Before the executive director evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement;

and

(C) in excess of the amount of fees submitted by the applicant under Section 361.604;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules that must be complied with;

(2) describe any work plan or report to be submitted for review by the executive director, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the executive director on or before the 30th day after good faith negotiations have begun:

(1) the person or the executive director may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for the activity that resulted in the contamination or release.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.607. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The executive director or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the executive director before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the executive director has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the executive director, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.608. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the executive director.

(b) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The

executive director may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the executive director may request the person to submit additional or corrected information.

(d) After considering future land use, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.609. CERTIFICATE OF COMPLETION. (a) If the executive director determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the executive director shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by Section 361.610;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's owner at the time the application to participate in the voluntary cleanup program was filed.

(c) If the executive director determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the executive director shall notify the person who undertook the voluntary cleanup and the current owner of the site

that is the subject of the cleanup of this determination.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.610. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible party solely because the person signs the application; and

(2) is released, on certification under Section 361.609, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(b) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the commission issues a certificate of completion under Section 361.609 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(2) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (1); or

(3) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.611. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state

hazardous waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.612. PUBLIC PARTICIPATION. The commission may adopt rules pertaining to public participation in voluntary cleanup decisions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.613. COST REPORT; BUDGET ALLOCATION. (a) The executive director annually shall calculate the commission's costs to administer the voluntary cleanup program under this subchapter and shall publish in the Texas Register the rates established for the purposes of identifying the costs recoverable by the commission under this subchapter.

(b) Costs recovered under this subchapter and appropriated to the commission shall be budgeted and distributed to each organizational unit of the commission solely on the basis of costs fairly attributable to the voluntary cleanup program.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

#### **SUBCHAPTER T. FIDUCIARY LIABILITY**

Sec. 361.651. DEFINITIONS. In this subchapter:

(1) "Fiduciary":

(A) means a person acting for the benefit of another party as a bona fide:

- (i) trustee;
- (ii) executor;
- (iii) administrator;
- (iv) custodian;
- (v) guardian of an estate or guardian ad litem;
- (vi) receiver;



(vii) conservator;  
(viii) committee of the estate of an incapacitated person;

(ix) personal representative;  
(x) trustee, including a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(xi) representative in any other capacity that the commission, after providing public notice, determines to be similar to the capacities described in Subparagraphs (i)-(x); and

(B) does not include:

(i) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

(ii) a person that acquires ownership or control of a solid waste facility with the objective purpose of avoiding liability of the person or of any other person.

(2) "Fiduciary capacity" means the capacity of a person in holding title to a solid waste facility or otherwise having control of or an interest in the solid waste facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(3) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or

aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

- (B) does not include a:
  - (i) consumer product in consumer use; or
  - (ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.652. LIABILITY OF FIDUCIARIES. (a) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, the liability of a fiduciary under this code or the Water Code for the release or threatened release of solid waste at, from, or in connection with a solid waste facility held in a fiduciary capacity does not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable independently of the person's ownership of a solid waste facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of solid waste if negligence, gross negligence, or wilful misconduct of a fiduciary causes or contributes to the release or threatened release.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a fiduciary is not liable in the fiduciary's personal capacity under this code or the Water Code for:

(1) undertaking or directing another person to undertake a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator designated under the national contingency plan or a commission-approved cleanup plan;

(2) undertaking or directing another person to undertake any other lawful means of addressing solid waste in connection with the solid waste facility;

(3) terminating the fiduciary relationship;

(4) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law or monitoring or enforcing the

term or condition;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(7) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(8) administering, as a fiduciary, a solid waste facility that was contaminated before the fiduciary relationship began; or

(9) declining to take an action described by Subdivisions (2)-(8).

(e) This section does not:

(1) affect a right, immunity, or defense available under this code or the Water Code that is applicable to a person subject to this section;

(2) create any liability for a person; or

(3) create a private right of action against a fiduciary or any other person.

(f) This section does not apply to a person if the person:

(1) acts in a capacity other than that of a fiduciary or in a beneficiary capacity and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(g) This section does not preclude a claim under this code or the Water Code against:

(1) the assets of the estate or trust administered by the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

#### **SUBCHAPTER U. LENDER LIABILITY**

Sec. 361.701. DEFINITIONS. In this subchapter:

(1) "Extension of credit" includes a lease finance

transaction:

(A) in which the lessor does not initially select the leased solid waste facility and does not during the lease term control the daily operations or maintenance of the solid waste facility; or

(B) that conforms with, as appropriate, regulations issued by:

(i) the appropriate federal banking agency or the appropriate state bank supervisor, as those terms are defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813); or

(ii) the National Credit Union Administration Board.

(2) "Financial or administrative function" includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(3) "Foreclosure" and "foreclose" mean, respectively, acquiring, and to acquire, a solid waste facility through:

(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(B) a deed in lieu of foreclosure, or similar conveyance from a trustee;

(C) repossession, if the solid waste facility was security for an extension of credit previously contracted;

(D) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

(E) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a solid waste facility in order to protect the security interest of the person.

(4) "Lender" means:

(A) an insured depository institution, as that term is defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813);

(B) an insured credit union, as that term is defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752);

(C) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);

(D) a leasing or trust company that is an affiliate of

an insured depository institution;

(E) any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(F) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(G) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person;

(H) a person that provides title insurance and that acquires a solid waste facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement; and

(I) an agency of this state that makes an extension of credit to or acquires a security interest from:

(i) a federal or state agency;

(ii) a county, municipality, or other body politic or corporate of this state, including:

(a) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(b) an interstate compact commission to which this state is a party; or

(c) a nonprofit water supply corporation created and operating under Chapter 67, Water Code; or

(iii) another person.

(5) "Operational function" includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(6) "Security interest" includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(7) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures,

appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

(B) does not include a:

- (i) consumer product in consumer use; or
- (ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.30, eff. Sept. 1, 1999.

Sec. 361.702. EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT. (a) In Section 361.271, the term "owner or operator" does not include a person that is a lender that:

(1) without participating in the management of a solid waste facility, holds a security interest in or with regard to the solid waste facility; or

(2) did not participate in management of a solid waste facility before foreclosure, notwithstanding the fact that the person:

(A) forecloses on the solid waste facility; and

(B) after foreclosure, sells, re-leases, in the case of a lease finance transaction, or liquidates the solid waste facility, maintains business activities, winds up operations, undertakes a response action with respect to the solid waste facility under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, or takes any other measure to

preserve, protect, or prepare the solid waste facility before sale or disposition, if the person seeks to sell, re-lease, in the case of a finance transaction, or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(b) For purposes of Subsection (a)(2)(B), a lender is presumed to divest the lender of the solid waste facility at the earliest practicable, commercially reasonable time if, within 12 months after foreclosure, the lender:

(1) lists the solid waste facility with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the solid waste facility for sale or other disposition at least monthly in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the solid waste facility being advertised; or

(C) a newspaper of general circulation in the area in which the solid waste facility is located.

(c) For purposes of Subsection (b), the 12-month period begins:

(1) when the lender acquires marketable title if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent if the lender does not act diligently to acquire marketable title.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a lender is not liable under this code or the Water Code to undertake a removal or remedial action or to pay a fine or penalty arising from the release or threatened release of solid waste at, from, or in connection with the solid waste facility in which the lender maintains a security interest or that the lender has acquired through foreclosure if:

(1) the lender has not participated in management before foreclosure;

(2) the conditions giving rise to the release or threat of release existed before foreclosure; and

(3) the lender seeks to divest the lender of the property under Subsections (a)(2)(B) and (b).

(e) Notwithstanding Subsection (d), if a lender after

foreclosure operates, directs the operation of, or maintains the operation of business activities, this section does not exempt or excuse the lender from compliance with legal requirements applicable to the operation of that business. Those operational requirements include permitting, reporting, monitoring, compliance with emission limitations, financial responsibility and assurance requirements, payment of fees, and payment of fines and penalties for noncompliance with those requirements.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.703. PARTICIPATION IN MANAGEMENT. (a) For purposes of Section 361.702, the term "participate in management":

(1) means actually participating in the management or operational affairs of a solid waste facility; and

(2) does not include merely having the capacity to influence, or the unexercised right to control, a solid waste facility or facility operations.

(b) A person that is a lender that holds a security interest in or with regard to a solid waste facility is considered to participate in management only if, while the borrower is still in possession of the solid waste facility encumbered by the security interest, the person:

(1) exercises decision-making control over the environmental compliance related to the solid waste facility such that the person has undertaken responsibility for the solid waste handling or disposal practices related to the solid waste facility; or

(2) exercises control at a level comparable to that of a manager of the solid waste facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the solid waste facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(B) over all or substantially all of the operational functions, as distinguished from financial or administrative functions, of the solid waste facility other than the function of environmental compliance.

(c) The term "participate in management" does not include:



- (1) performing an act or failing to act before the time at which a security interest is created in a solid waste facility;
- (2) holding a security interest or abandoning or releasing a security interest;
- (3) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;
- (4) monitoring or enforcing the terms and conditions of the extension of credit or security interest;
- (5) monitoring or undertaking one or more inspections of the solid waste facility;
- (6) requiring a response action or other lawful means of addressing the release or threatened release of solid waste in connection with the solid waste facility before, during, or on the expiration of the term of the extension of credit;
- (7) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the solid waste facility;
- (8) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;
- (9) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or
- (10) conducting a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, if the actions do not rise to the level of participating in management within the meaning of Subsections (a) and (b).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

#### **SUBCHAPTER V. IMMUNITY FROM LIABILITY OF INNOCENT OWNER OR OPERATOR**

Sec. 361.751. DEFINITIONS. In this subchapter:

- (1) "Contaminant" has the meaning assigned by Section 361.601.

(2) "Innocent owner or operator" means a person that:

(A) is an owner or operator of property that has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property; and

(B) did not cause or contribute to the source or sources of the contamination referred to in Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.752. IMMUNITY FROM LIABILITY; ACCESS TO PROPERTY.

(a) An innocent owner or operator of property is not liable under this code or the Water Code for investigation, monitoring, remediation, or corrective or other response action regarding the conditions attributable to a release or migration of a contaminant or otherwise liable regarding those conditions.

(b) A person that acquires a portion of the tract on which the source of a release of contaminants is located from the person that caused the release is eligible for immunity under Subsection (a) only if, after appropriate inquiry consistent with good commercial or customary practice, the person did not know or have reason to know of the contamination at the time the person acquired the property.

(c) To be eligible for immunity under Subsection (a), an owner or operator must grant reasonable access to the property for purposes of investigation or remediation to a person designated by the executive director. An agreement for reasonable access may provide:

(1) that the designated person may not unreasonably interfere with the use of the property;

(2) for payment of reasonable compensation for access to the property; or

(3) that the owner or operator is indemnified from liability for an intentional or negligent act of the designated person arising from the person's access to and use of the property.

(d) This section does not limit any right of the commission under another provision of this code or the Water Code to obtain access to the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.753. CERTIFICATION. (a) A person may apply to the

commission for a certificate confirming that the person is an innocent owner or operator. The application must include a complete site investigation report that demonstrates that:

- (1) the property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property;
- (2) the owner or operator has not caused or contributed to the source or sources of the contamination referred to in Subdivision (1); and
- (3) the owner or operator is eligible for immunity under Section 361.752(b).

(b) The commission may charge an application fee in an amount not to exceed the cost of reviewing the application. The commission shall deposit a fee collected under this subsection to the credit of the hazardous and solid waste remediation fee account.

(c) Not later than the 45th day after the date the commission receives the application, the commission shall notify the applicant whether the application is complete.

(d) Not later than the 90th day after the date the commission receives the application, the commission shall:

- (1) issue or deny the certificate; or
- (2) notify the applicant of any additional information needed to review the application.

(e) Not later than the 45th day after the date the commission receives the additional information requested under Subsection (d)(2), the commission shall issue or deny the certificate.

(f) The certificate evidences the immunity from liability of the applicant as provided by Section 361.752.

(g) The commission may condition the issuance of the certificate on the placement of restrictions on the use of the property that are reasonably necessary to protect the public health, including:

- (1) institutional controls such as deed restrictions or municipal zoning restrictions; or
- (2) at the owner's or operator's option, other control measures.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.010, eff.

September 1, 2009.

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY. This subchapter does not limit the right of an innocent owner or operator to pursue any remedy available at law or in equity for conditions attributable to the release or migration of contaminants from a source or sources that are not located on or at the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

#### **SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS**

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Subchapter G, Chapter 26, Water Code.

(2) "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature finds that access to and the use of groundwater may need to be

restricted to protect public health and welfare where the quality of groundwater presents an actual or potential threat to human health.

(b) The legislature finds that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a municipal setting designation advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.802. PURPOSE. The purpose of this subchapter is to provide authorization to the executive director to certify municipal setting designations for municipal properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

(1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute; and

(2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:

(A) the property for which designation is sought; and

(B) property within one-half mile of the property for which designation is sought.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 240 (H.B. 2018), Sec. 1, eff. May 25, 2007.

## Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION.

(a) A person seeking to obtain a municipal setting designation under this subchapter must submit an application to the executive director as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain the following:

(A) the applicant's name and address;

(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2) or (c)(2), as applicable;

(C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 support the proposed designation;

(D) an affidavit that affirmatively states that:

(i) the municipal setting designation eligibility criteria contained in Section 361.803 are satisfied;

(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c);  
and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065, or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required

resolutions or other documentation satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807; and

(3) be accompanied by an application fee of \$1,000.

(c) Not later than 90 days after receiving an application submitted as provided by Subsection (b), the executive director shall:

(1) issue a municipal setting designation certificate in accordance with Section 361.807;

(2) deny the application in accordance with Section 361.806; or

(3) request additional information for the municipal setting designation application.

(d) Not later than the 45th day after the date the executive director receives any additional information requested under Subsection (c)(3), the executive director shall certify or deny the application.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. [2826](#)), Sec. 1, eff. September 1, 2011.

Sec. 361.805. NOTICE. (a) On or before the date of submission of an application to the executive director, a person seeking a municipal setting designation must provide notice to:

(1) each municipality:

(A) in which the property for which the designation is sought is located;

(B) with a boundary located not more than one-half mile from the property for which the designation is sought; or

(C) that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought;

(2) each owner of a private water well registered with the commission that is located not more than five miles from a boundary

of the property for which the designation is sought; and

(3) each retail public utility, as defined by Section 13.002, Water Code, that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought.

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought;

(7) identification of the party responsible for the contamination of the property, if known; and

(8) if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements of Section 361.8065 for issuance of a municipal setting designation certificate under Section 361.807 by complying with the requirements of Section 361.8065(c), a statement that a municipality described by Subsection (a)(1)(B) or (C) of this section or a public utility described by Subsection (a)(3) of this section has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal setting designation.

(c) The applicant must submit copies of the notice letters delivered in accordance with Subsection (a) and the signed delivery receipts to the executive director with the application.

(d) For the purpose of this section, notice to a municipality must be provided to the city secretary for the municipality and notice to a retail public utility must be to the registered agent, the owner, or the manager.



(e) A municipality, retail public utility, or private well owner entitled to notice under this section may file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 2, eff. September 1, 2011.

Sec. 361.806. DENIAL OF APPLICATION. (a) The executive director shall deny an application submitted under Section 361.804 if:

(1) any of the eligibility criteria described in Section 361.803 have not been met for the property for which the municipal setting designation is sought;

(2) the application is incomplete or inaccurate; or

(3) after the 60-day comment period described by Section 361.805(e), the executive director determines that the municipal setting designation would negatively impact the current and future regional water resource needs or obligations of a municipality, a retail public utility, or a private well owner described by Section 361.805(a).

(b) If the executive director determines that an application is incomplete or inaccurate, the executive director, not later than the 90th day after receipt of the application, shall provide the applicant with a list of all information needed to make the application complete or accurate.

(c) If the executive director denies the application, the executive director shall:

(1) notify the applicant that the application has been denied; and

(2) explain the reasons for the denial of the application.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Except as provided by Subsection (c), before the executive director may issue a

municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

- (1) that the application is supported by a resolution adopted by:
    - (A) the city council of each municipality described by Section 361.805(a)(1)(B) or (C); and
    - (B) the governing body of each retail public utility described by Section 361.805(a)(3); and
  - (2) that the property for which designation is sought is:
    - (A) subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or
    - (B) subject to a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.
- (b) A designation described by Subsection (a)(2)(B) must be supported by a resolution passed by the city council of the municipality.
- (c) If the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant has complied with the requirements of Section 361.805(b)(8), the applicant is considered to have complied with the requirements of Subsection (a) of this section for eligibility for a municipal setting designation certificate under Section 361.807 if the applicant provides documentation of the following:
- (1) that no resolution opposing the application has been adopted within 120 days of receipt of the notice provided under Section 361.805 by:
    - (A) the city council of any municipality described by Section 361.805(a)(1)(B) or (C); or
    - (B) the governing body of any retail public utility described by Section 361.805(a)(3); and
  - (2) that the property for which designation is sought:
    - (A) is currently or has previously been under the oversight of the commission or the United States Environmental Protection Agency; and

(B) is subject to:

(i) an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or

(ii) a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(d) The documentation required under Subsection (c)(1) may be in the form of an affidavit of the applicant or the applicant's representative.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 3, eff. September 1, 2011.

Sec. 361.807. CERTIFICATION. (a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall issue a copy of the municipal setting designation certificate to:

- (1) the applicant for the municipal setting designation;
- (2) each municipality, retail public utility, and private well owner described by Section 361.805(a); and
- (3) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

(b) The municipal setting designation certificate shall:

- (1) indicate that the municipal setting designation eligibility criteria described in Section 361.803 are satisfied and that the executive director has certified the municipal setting designation;
- (2) indicate that any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response action requirements in accordance with Section 361.808; and
- (3) include a legal description of the outer boundaries of

the municipal setting designation.

(c) If the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065 have not been submitted, the executive director shall issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065. On submission of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065, the executive director shall issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. [2826](#)), Sec. 4, eff. September 1, 2011.

Sec. 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS.

(a) If no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall not require a person addressing environmental impacts for a property located in the municipal setting designation to:

- (1) investigate the nature and extent of contamination in groundwater except to satisfy the requirements of Subsection (b); or
- (2) conduct response actions to remove, decontaminate, or control environmental impacts to groundwater based solely on potential potable water use.

(b) Notwithstanding Subsection (a), the executive director shall require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure:

- (1) the protection of humans from exposures to environmental impacts to groundwater that are not related to a potable water use, including exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater; or

(2) the protection of ecological resources.

(c) If potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall require a person addressing environmental impacts for a property located in the municipal setting designation to complete an investigation to determine whether groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation.

(d) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has not caused and is not reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response actions at the property except to the extent that response actions are necessary to satisfy Subsection (b).

(e) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response action at the source property if the person addressing environmental impacts:

(1) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater to meet applicable human health or ecological standards; or

(2) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater that are not related to a potable water use, including actions to protect humans from exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater and actions to protect ecological resources, and:

(A) provides to owners of impacted potable water wells described in Subsection (c) a reliable alternate water supply that will provide a volume of water sufficient for the intended use for a period not shorter than the period that the impacted wells exceed the

human health or ecological standards and, after obtaining permission from such owners, files a restrictive covenant that prohibits the use of groundwater from those wells as potable water and restricts other uses of groundwater in a manner consistent with groundwater quality; or

(B) expands the municipal setting designation in accordance with the procedures under this subchapter relating to the initial application for a municipal setting designation to include the properties with impacted potable water wells described in Subsection (c).

(f) Notwithstanding any other provision of this section, the executive director may require a person responsible for property within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater; or

(2) the protection of ecological resources.

(g) This subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Nothing in this subchapter shall be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants. Nothing in this subchapter is meant to alter or supersede any requirement of a federally authorized environmental program administered by the State of Texas.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT  
OF BROWNFIELDS**

Sec. 361.901. DEFINITIONS. In this subchapter:

(1) "Assessment" means an environmental assessment described by Section 361.904.

(2) "Brownfield" means real property the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of environmental contamination.

(3) "Brownfield program" means a county brownfield cleanup and economic redevelopment program described by Section 361.902.

(4) "Eligible owner" means the owner of a brownfield who demonstrates to the commissioners court of the county in which the brownfield is located that the owner:

(A) became the owner after the contamination occurred;

(B) did not contribute to the contamination as an owner responsible for contamination or through association with previous owners responsible for the contamination;

(C) exercises appropriate care at the brownfield by taking reasonable steps to stop continuing releases, prevent any threatened future releases, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance; and

(D) complies with local, state, and federal laws with respect to land use and requests for information.

(5) "Eligible site" means a property or facility that is owned by a county or, if not owned by a county, for which the owner applies to a county for brownfield assistance or certification and a county determines is a brownfield under the county's brownfield program.

(6) "Licensed professional engineer" means a person licensed by the Texas Board of Professional Engineers.

(7) "Remediation" means an action included within the meanings of "remedial action" and "removal," as those terms are defined by Section 361.003.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT PROGRAM. (a) The commissioners court of a county with a population of 250,000 or more may establish a program for the cleanup and economic redevelopment of brownfields located in the county, as authorized by Section 52-a, Article III, Texas Constitution.

(b) A brownfield program must include:

(1) procedures to:

(A) identify eligible sites;

(B) conduct assessments;

(C) prioritize the remediation of eligible sites, with consideration given to:

(i) the number of jobs related to the remediation;

and

(ii) the resulting economic and environmental benefits to the county;

(D) conduct the remediation of an eligible site;

(E) conduct the inspection of a property or facility after remediation; and

(F) guide eligible owners in applying for county assistance under the program; and

(2) standards by which the county can determine:

(A) the eligibility of a person for a grant or loan under the program;

(B) the eligibility of a person to enter into a contract with the county to perform remediation or inspection; and

(C) the completeness of the remediation of a property or facility.

(c) The county shall make available to the public and to the commission a draft of the proposed program at least 60 days before a public hearing to receive comments on the proposed program.

(d) The county shall review comments received and make amendments to the draft as appropriate before adopting and implementing the program.

(e) The county shall submit a copy of the final draft of a program adopted under this section to the commission and shall make the final draft available to the public.

(f) The county may amend a program adopted under this section by applying the procedures described by Subsections (c), (d), and (e) to the proposed amendment.

(g) The county may assign current or employ additional staff to implement a program adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.



Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT FUND. (a) The commissioners court of a county may establish a fund for a brownfield program and deposit to the credit of the fund any money the commissioners court considers appropriate, including revenue from property taxes, sales taxes, fees, gifts or grants, principal and interest payments made to repay loans from the fund, proceeds from the issuance of bonds, and contributions of other resources.

(b) Money from a fund established under this section may be used only to provide for economic growth and development of the county by paying for all or part of:

- (1) the cost of an assessment;
- (2) the cost of remediating a brownfield;
- (3) the cost of inspecting a property or facility after remediation;
- (4) a loan to an eligible owner or licensed professional engineer to conduct assessment, eligible site remediation, or inspection of a property or facility after remediation; or
- (5) administrative expenses associated with implementing the brownfield program.

(c) For the purposes of the county's brownfield program, a county may solicit and leverage money from other sources, including federal money that may be available for brownfield assessment and eligible site remediation.

(d) Before a county may issue bonds payable from ad valorem taxes to provide money for a fund, the bond issuance must be approved by a majority of the voters voting on the issue at an election held for that purpose.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. [1413](#)), Sec. 2, eff. September 1, 2005.

Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment under this subchapter must include:

- (1) a legal description of the property or facility;
- (2) a description of the physical characteristics of the property or facility;
- (3) the operational history of the property or facility to the extent that history is known by the owner;

(4) information of which the owner is aware concerning the nature and extent of any relevant contamination or release at the property or facility and immediately contiguous to the property or facility, or wherever the contamination came to be located; and

(5) relevant information of which the owner is aware concerning the potential for human exposure to contamination at the property or facility.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject to the requirements of Subchapter C, Chapter 312, Tax Code, a county may designate an area of the county that contains a brownfield as a reinvestment zone and enter into a tax abatement agreement based on the remediation of the brownfield with the eligible owner of the brownfield.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION.

(a) A county may contract with a licensed professional engineer or contractor to:

(1) conduct remediation for an eligible site owned by the county; or

(2) inspect a property or facility after remediation to determine whether it meets county standards for completeness of the remediation.

(b) To be eligible to enter into a contract with a county under this section or to receive a loan under Section 361.907, a licensed professional engineer or contractor at a minimum must provide evidence to the county of previous success in conducting remediation or inspection, as applicable, of at least one brownfield or other property or facility contaminated by a hazardous substance.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.907. GRANTS AND LOANS. To help finance an assessment, eligible site remediation, or inspection, a county may provide money as a grant or a loan from a county fund established under Section 361.903 to:

- (1) an eligible owner; or
- (2) a licensed professional engineer or contractor who meets the requirements of Section 361.906.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY. A county that establishes a brownfield program may act as a liaison between an eligible owner, licensed professional engineer, or contractor and the Environmental Protection Agency to assist in obtaining a federal grant for an assessment or eligible site remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.909. LIAISON TO COMMISSION. A county that establishes a brownfield program may act as a liaison between the commission and an eligible owner, licensed professional engineer, or contractor to assist in obtaining any available commission assistance for an assessment, eligible site remediation, or property or facility inspection after remediation.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who is an eligible owner, licensed contractor, or licensed professional engineer engaged in an assessment, eligible site remediation, or property or facility inspection after remediation under a program adopted under this subchapter is not liable for damages or costs resulting from a release or threatened release of a hazardous

substance that occurs during the assessment, remediation, or inspection unless the person:

(1) qualified as an eligible owner, licensed professional engineer, or contractor by fraud, misrepresentation, or knowing failure to disclose material information; or

(2) negligently or knowingly contributed to or caused the release or threatened release.

(b) The county shall inspect a property or facility after remediation is completed to determine whether the remediation meets county standards for completeness under the brownfield program. On a finding that the remediation meets the standards, the county shall issue a certificate signifying the satisfactory remediation to the owner of the property or facility and shall file a copy of the certificate in the county property records. The owner or a subsequent owner of a remediated property or facility is not liable for the costs of any additional assessment or remediation for environmental contamination that occurred before the issuance of the certificate.

(c) This subchapter does not limit or impair any immunity or defense to liability or suit that may be available to a county under any other provision of law.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a property or facility who is denied a certificate under Section 361.910:

(1) is entitled to receive a detailed description of actions needed for the property or facility to meet county standards; and

(2) may apply for additional county assistance under the county's brownfield program.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.912. COMMISSION ASSISTANCE. The commission may provide:

(1) educational, advisory, and technical services concerning assessment, remediation, and inspection of brownfields to a county that establishes a brownfield program under this subchapter; and

(2) assistance to a county in obtaining federal grants for assessment and remediation of brownfields.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. [1413](#)), Sec. 2, eff. September 1, 2005.

**For expiration of this subchapter, see Section 361.966.**

**SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM**

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. [2714](#)), Sec. 1, eff. September 1, 2007.

Sec. 361.952. DEFINITIONS. In this subchapter:

(1) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(2) "Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(3) "Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

- (i) the person owns or owned; or
- (ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;
- (C) who manufactures or manufactured computer equipment without affixing a brand;
- (D) who manufactures or manufactured computer equipment to which the person affixes or affixed a brand that:
  - (i) the person does not or has not owned; or
  - (ii) the person is not or was not licensed to use;

or

(E) who imports or imported computer equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(5) "Television" means any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a) Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. Many of those products can be refurbished and reused, and many contain valuable components that can be recycled.

(b) The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life. The program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.954. APPLICABILITY. (a) The collection, recycling, and reuse provisions of this subchapter apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal digital assistant, or a telephone;

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement; or

(3) the sale or lease of computer equipment to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer must:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand.

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any computer equipment that has reached the end of its useful life and is labeled with the manufacturer's brand; and

(2) recycling or reuse of computer equipment collected under Subdivision (1).

(c) The collection of computer equipment provided under the recovery plan must be:

(1) reasonably convenient and available to consumers in this state; and

(2) designed to meet the collection needs of consumers in this state.

(d) Examples of collection methods that alone or combined meet

the convenience requirements of this section include:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(e) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) The recovery plan must include information for the consumer on how and where to return the manufacturer's computer equipment.

The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site;

(2) shall provide collection, recycling, and reuse information to the commission; and

(3) may include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(g) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Each manufacturer shall submit a report to the commission not later than January 31 of each year that includes:

(1) the weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with Section 361.964 regarding sound environmental management.

(i) If more than one person is a manufacturer of a certain brand of computer equipment as defined by Section 361.952, any of those persons may assume responsibility for and satisfy the



obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(j) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.956. RETAILER RESPONSIBILITY. (a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's label and the manufacturer is included on the commission's list of manufacturers that have recovery plans.

(b) Retailers can go to the commission's Internet site as outlined in Section 361.958 and view all manufacturers that are listed as having registered a compliant collection program. Covered electronic products from manufacturers on that list may be sold in or into the State of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.957. LIABILITY. (a) A manufacturer or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff.

September 1, 2007.

Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES. (a) The commission shall educate consumers regarding the collection, recycling, and reuse of computer equipment.

(b) The commission shall host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including best management practices and information about and links to information on:

- (1) manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans; and
- (2) computer equipment collection events, collection sites, and community computer equipment recycling and reuse programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.959. ENFORCEMENT. (a) The commission may conduct audits and inspections to determine compliance with this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) The attorney general may file suit under Section 7.032, Water Code, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by Section 361.955 must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff.

September 1, 2007.

Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission shall compile information from manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of computer equipment that has reached the end of its useful life by visiting the commission's and manufacturers' Internet sites.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of computer equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of computer equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases computer equipment shall require each prospective bidder to certify the bidder's compliance with this subchapter. Failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.

(d) In considering bids for a contract for computer equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand.

(e) The Texas Building and Procurement Commission and the Department of Information Resources shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of computer equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

**Text of subchapter effective until the date the Texas Commission on Environmental Quality issues a statement under Section 361.992.**

**SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM**

Sec. 361.971. DEFINITIONS. In this subchapter:

(1) "Brand" has the meaning assigned by Section 361.952.

(2) "Consumer" means an individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) "Covered television equipment" means the following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

(5) "Recycling" means any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to

use in the form of raw material or products. The term does not include incineration.

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(7) "Television" means an electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(8) "Television manufacturer" means a person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state;

or

(2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by Section 361.952;

(2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that manufacturer collects and recycles the device in accordance with Subchapter Y;

(3) any part of a motor vehicle, including a replacement part;

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.974. SALES PROHIBITION. A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of \$2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

(1) a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand; and

(2) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total amount of



covered television equipment the television manufacturer sold nationally in the preceding calendar year; and

(2) the total weight of covered television equipment the television manufacturer collected and recycled in this state during the preceding calendar year.

(c) Fees collected under this section shall be deposited to the credit of the television recycling account created under Section 361.977.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The television recycling account is an account in the general revenue fund that consists of the:

- (1) fees collected under Section 361.976; and
- (2) interest earned on the money in the account.

(b) Money in the account may be appropriated only to the commission to be used by the commission to maintain a public Internet website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) This section does not apply to a television manufacturer that participates in a recycling leadership program described by Section 361.979.

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under Section 361.976, each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle

covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. [329](#)), Sec. 1, eff. September 1, 2011.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM. (a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and

recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling

leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT.

(a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years; and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer,

the television manufacturer was listed on the Internet website described by Section 361.984(a).

(b) A person who is a retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.990;

(4) maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and

(5) annually report to the commission the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

- (1) whose recovery plans have been approved by the commission;
- (2) whose public education programs are in full compliance with this subchapter; and
- (3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.

(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet website and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

- (1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and
- (2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's

recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. [329](#)), Sec. 1, eff. September 1, 2011.

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections



(d) and (e), take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission by each television manufacturer's report required by Section 361.976(b) or 361.980(a), as applicable;

(2) a summary of comments that have been received from

stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(3) any recommendations under Section 361.984(h); and

(4) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.988. FEES. (a) Except as provided by Section 361.976(a), this subchapter does not authorize the commission to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Fees or costs collected under this subchapter may be used by the commission only to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet websites or calling their toll-free telephone numbers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT.

(a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television equipment in this state the standards

provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Incorporated, April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.

(d) In considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation; or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) The comptroller shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the

federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

**CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 362.001. SHORT TITLE. This chapter may be cited as the Solid Waste Resource Recovery Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.002. POLICY AND PURPOSE. (a) The policy of the state is to safeguard the public health, general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(b) It is the policy of the state that the processing of solid waste for reuse is essential to the well-being and survival of state inhabitants and the protection of the environment. That processing will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.003. DEFINITIONS. In this chapter:

(1) "Bond" includes a note or other evidence of indebtedness.

(2) "Cost" means expenses related or incidental to the acquisition, construction, or improvement of a system, including:

- (A) real property acquired for a system;
- (B) finance charges;
- (C) interest before and during construction and for a period the issuer finds reasonable after completion of construction;
- (D) expenses incurred for architectural, engineering,

and legal services;

(E) license fees and royalties;

(F) expenses incurred for plans, specifications, surveys, and estimates;

(G) expenses incurred in placing the system in operation; and

(H) administration expenses.

(3) "Issuer" means a district or authority that:

(A) is created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution;

(B) is authorized by law to own a waste disposal system; and

(C) includes within its boundaries all of at least one county.

(4) "Public agency" means:

(A) an issuer;

(B) a municipality; or

(C) another political subdivision or agency of the state authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(5) "Real property" means land, a structure, a franchise or interest in land, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(6) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the issuer's governing body.

(7) "Security agreement" means a trust indenture or other instrument securing bonds.

(8) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(9) "System" means real property, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful:

(A) in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste, or convert it to energy or useful matter or resources including electricity, steam, or other form of energy, metal,

fertilizer, glass, or other form of resource; or

(B) in the transportation, receipt, storage, transfer, and handling of solid waste, the preparation, separation, or processing of solid waste for reuse, the handling and transportation of recovered matter, resources, or energy, and the handling, transportation, and disposition of nonrecoverable solid waste residue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.004. EFFECT OF OTHER LAW. (a) This chapter does not limit the authority of the Texas Natural Resource Conservation Commission or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

(b) Chapter 361 (Solid Waste Disposal Act) shall be enforced without regard to ownership of a system financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate, or recover damages for, a condition of pollution or other nuisance. A person purchasing or leasing a system under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the system.

(d) An issuer or public agency may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.031, eff. Aug. 12, 1991.

Sec. 362.005. EXCEPTION FOR CERTAIN MATERIAL PRESORTED TO BE RECYCLED. This chapter does not authorize a public agency to compel burning of material presorted to be recycled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER B. OPERATION OF SYSTEM**

Sec. 362.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a system for lease or sale as provided by this chapter and may acquire real property as the issuer considers appropriate for the system.

(b) An issuer may lease its system to another person.

(c) An issuer may sell a system, by installment payments or other method of payment, to any person on conditions the issuer considers desirable.

(d) A lease or sales contract entered into under this chapter may be for the term agreed to by the parties, and must provide that it continues in effect until the bonds specified in the lease or contract, or refunding bonds issued in place of those bonds, are fully paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.012. LOCATION OF SYSTEM. A system may be located on the property of any person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.013. CONTRACT TERMS AND PROCEDURES. (a) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a contract entered into by an issuer.

(b) An issuer may contract for the acquisition, construction, and improvement of a system on the terms and under the conditions that the governing body of the issuer considers appropriate, including a contract under which a person agrees to perform and supply all services and materials required in connection with the design, construction, and placing into operation of a system.

(c) The issuer shall publish notice of the time and place the contract will be let in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks, with the first publication occurring not later than the 15th day before the date the contract will be let.

(d) The issuer shall analyze competitive proposals received in response to the notice and let the contract to the responsible party making the proposal that is most advantageous to the issuer and that will result in the most economical completion of the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 362.014. PUBLIC AGENCY CONTRACT. (a) A public agency, on terms it considers appropriate, may contract with an issuer or other person who finances, constructs, or improves a system to sell, lease, or dedicate the use of real property or all or part of a solid waste disposal facility for use as part of the system.

(b) A public agency may contract with any person for the supply, collection, or transportation of solid waste for disposal at a system. The public agency may agree in the contract to supply minimum amounts of solid waste and to pay minimum fees for the right to dispose of the solid waste at the system during the term of the contract. The contract may continue in effect for the term of years that the public agency's governing body determines to be desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.015. PAYMENT OF CONTRACT FROM SOURCES OTHER THAN TAXES. (a) A public agency may use any available revenue or resource for, or pledge the revenue or resource to, payment of all or part of the amount due under a contract under Section 362.014. The public agency may agree in the contract to assure availability of payment when required.

(b) The public agency may agree to make sufficient provision in its annual budget to make all payments under the contract.

(c) The public agency may fix, charge, and collect, from its inhabitants or other users or beneficiaries of a service or facility provided in connection with the contract, a fee, rate, charge, rental, or other amount for the service or facility, including a water charge, sewage charge, solid waste disposal fee or charge, garbage collection or handling fee, or other fee or charge. The public agency may use those amounts for, or pledge them to, payments required under the contract, and may agree in the contract to make



that use or pledge in an amount sufficient to make all or part of the payments when due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.016. PAYMENT OF CONTRACT FROM TAXES. (a) A public agency that has taxing power and that, when it enters into a contract under Section 362.014, is using its general funds, including tax revenue, to pay all or part of the cost of providing solid waste collection, transportation, and disposal services may agree that the payments under the contract are an obligation against the public agency's taxing power.

(b) Except as provided by Subsection (c), a person is not entitled to demand payment from taxes during any period unless the contracting person is willing and able to receive and dispose of solid waste during the period as provided by the contract.

(c) A public agency that has taxing power may hold an election substantially in accordance with Chapter 1251, Government Code, applicable to issuance of bonds by a municipality to determine whether a contract may be an obligation secured by the taxing power of the public agency to an extent not permitted by Subsection (b). If it is determined by a favorable vote at the election that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under the contract, and that the payments are to be made unconditionally regardless of whether the contracting person is willing and able to receive and dispose of solid waste as provided by the contract, the contract is an obligation secured by the public agency's taxing power to the extent provided. The ballot proposition at the election must plainly state that ad valorem tax funds may be used to make contract payments if the contractor cannot receive or dispose of solid waste because of mechanical failure of the facility financed by the bonds or for other reasons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.269, eff. Sept. 1, 2001.

Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A public agency that has entered into a contract under Section 362.014 may sponsor the creation of an industrial development corporation

under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.15, eff. April 1, 2009.

Sec. 362.018. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.019. TAXATION. (a) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(b) A system purchased or leased under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer according to state law. An item purchased or leased as part of a system is subject to all applicable state taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. BONDS**

Sec. 362.031. AUTHORITY TO ISSUE BONDS AND BOND ANTICIPATION

NOTES. (a) An issuer may issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing, or improving a system.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) The issuer may declare an emergency because funds are not available to pay the principal of and interest on its bonds or to meet other needs of the issuer and may issue bond anticipation notes to borrow the needed money. The bond anticipation notes may bear interest at any fixed, floating, or other type of rate, and must mature within one year of their date. The bond anticipation notes shall be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.032. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the issuer's governing body;

(2) be attested by the secretary of the issuer's governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the issuer's governing body, except that the designation must include:

(1) the name of each person guaranteeing the contractual obligation of each person leasing or purchasing the system; or

(2) a statement, if applicable, that a group of persons will be leasing or purchasing the system.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.033. TERMS. Bonds issued under this chapter must mature serially or in another manner not more than 40 years after they are issued. The bonds may:

- (1) bear interest at a fixed, floating, or other type of rate, and be sold at public or private sale at a price or under terms that the issuer's governing body determines to be the most advantageous reasonably obtainable;
- (2) be made callable before maturity at times and prices prescribed by the issuer's governing body;
- (3) be in coupon form; and
- (4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.034. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or contract of sale previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.035. PLEDGE OF REVENUE AND OTHER AMOUNTS AS SECURITY.

(a) Bonds are payable solely from and shall be secured by a pledge of:

- (1) revenues of the issuer derived from the lease or sale of a system;
- (2) amounts attributable to bond proceeds; or
- (3) amounts obtained through the exercise of a remedy provided by the governing body's resolution or a security agreement

securing the bonds in the manner specified in the resolution or security agreement.

(b) The governing body shall fix and periodically revise payments under a lease or contract for sale of a system so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement.

(c) The governing body may direct the investment of money in the funds created by the resolution or security agreement, and may delegate this authority to its authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.036. SECURITY MAY APPLY TO ADDITIONAL BONDS. (a) A pledge under Section 362.035 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge.

(b) Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.037. TRUST AS SECURITY. (a) The issuer's governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank that has trust powers and that is located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 362.038, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's system as provided by the trust indenture;

(4) provide in other manners for protection and enforcement of bondholders' rights and remedies as is reasonable and proper; and

(5) provide for the issuance of replacement bonds for lost,

stolen, or mutilated bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.038. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated system of the issuer's governing body and all property and rights appurtenant to the system.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the system, sell the system to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the system and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.039. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.040. INVESTMENT AND USE OF PROCEEDS. (a) The governing body of the issuer may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds shall be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds shall be invested in the manner provided by the resolution or security agreement.

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of sales contract or lease revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.041. REFUNDING BONDS. (a) The governing body of an issuer may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.042. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;  
 (3) a trust company;  
 (4) a savings and loan association;  
 (5) an insurance company;  
 (6) a fiduciary;  
 (7) a trustee; and  
 (8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.043. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 363. MUNICIPAL SOLID WASTE**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 363.001. SHORT TITLE. This chapter may be cited as the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.002. POLICY. It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy.



Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.003. FINDINGS. The legislature finds that:

(1) the growth of the state's economy and population has resulted in an increase in discarded materials;

(2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;

(3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit

this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems;

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and

(12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1045, Sec. 11, eff. Sept. 1, 1993.

Sec. 363.004. DEFINITIONS. In this chapter:

(1) "Advisory council" means the Municipal Solid Waste Management and source Recovery Advisory Council.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of containerized or uncontainerized solid waste or hazardous waste into or on land or water so that the solid waste or hazardous waste or any constituent of solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into surface water or groundwater.

(5) "Governing body" means the governing body of a municipality, the commissioners court, the board of directors, the trustees, or a similar body charged by law with governing a public agency.

(6) "Hazardous waste" means solid waste identified or

listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(7) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(8) "Local government" means a county, municipality, or other political subdivision of the state exercising the authority granted under Section 361.165 (Solid Waste Disposal Act).

(9) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(10) "Planning fund" means the municipal solid waste management planning fund.

(11) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(12) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to:

(A) neutralize hazardous waste;

(B) recover energy or material from hazardous waste;

or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(13) "Property" means land, structures, interest in land, air rights, water rights, and rights that accompany interest in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(14) "Public agency" means a municipality, county, or district or authority created and operating under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of those governmental entities acting under an interlocal agreement and having the authority under this chapter or other law to own and operate a solid waste management system.

(15) "Regional or local solid waste management plan" means a plan adopted by a planning region under Section 363.062 or a local government under Section 363.063.

(16) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body.

(17) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(18) "Resource recovery system" means real property, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste or convert it to energy or useful matter or resources, including electricity, steam, or other forms of energy, metal, fertilizer, glass, or other forms of material and resources. The term includes real property, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) transporting, receiving, storing, transferring, and handling solid waste;

(B) preparing, separating, or processing solid waste for reuse;

(C) handling and transporting recovered matter, resources, or energy; and

(D) handling, transporting, and disposing of nonrecoverable solid waste residue.

(19) "Solid waste" means garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural

operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(20) "Solid waste management" means the systematic control of any of the following activities:

- (A) generation;
- (B) source separation;
- (C) collection;
- (D) handling;
- (E) storage;
- (F) transportation;
- (G) processing;
- (H) treatment;
- (I) resource recovery; or
- (J) disposal of solid waste.

(21) "Solid waste management system" means a plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated to collect, handle, store, process, recover material or energy from, or dispose of solid waste, and includes sites for those works and equipment.

(22) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the Texas Board of Health, including subsequent amendments by the commission.

(23) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund.

(24) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that result from landscaping

maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.032, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.93, eff. Sept. 1, 1995.

Sec. 363.005. APPLICATION OF CHAPTER. This chapter applies only to solid waste and hazardous waste as described by Sections 361.011 and 361.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.033, eff. Aug. 12, 1991.

Sec. 363.006. CONSTRUCTION OF CHAPTER; EXEMPTIONS. (a) This chapter does not prohibit or limit a person from extracting or using materials that the person generates or legally collects or acquires for recycling or resale.

(b) Materials that are separated or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.007. STATUTES NOT AFFECTED BY CHAPTER. This chapter does not affect:

- (1) Chapter 361 (Solid Waste Disposal Act);
- (2) Chapter 364 (County Solid Waste Control Act); or
- (3) Chapter 362 (Solid Waste Resource Recovery Financing Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. COMMISSION POWERS AND DUTIES**

Sec. 363.021. COMMISSION RULEMAKING AUTHORITY. The commission may adopt rules necessary to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.022. COMMISSION POWERS AND DUTIES. (a) The commission shall implement and enforce this chapter.

(b) The commission shall:

- (1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out this chapter;
- (2) promote planning for and implementation of the recovery of materials and energy from solid waste;
- (3) establish guidelines for regional and local municipal solid waste management plans;
- (4) review and approve or disapprove regional and local municipal solid waste management plans;
- (5) assist the advisory council in its duties;
- (6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;
- (7) provide procedures under which public agencies and planning regions may apply for financial assistance grants;
- (8) evaluate applications and award financial assistance grants in accordance with commission rules; and
- (9) coordinate programs under this chapter with other state agencies, including the Railroad Commission of Texas and any other state or federal agency having an interest in a program or project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.023. APPLICATION FOR FEDERAL FUNDS; CONTRACTS AND AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.024. DISBURSEMENT OF FEDERAL FUNDS. (a) The commission may accept and disburse funds received from the federal government for purposes relating to solid waste management and resource recovery in the manner provided by this chapter and by agreement between the federal government and the commission.

(b) State funds provided to public agencies or planning regions under this chapter may be combined with local or regional funds to match federal funds on approved programs for municipal solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. ADVISORY COUNCIL**

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 18 members appointed by the commission:

- (1) an elected official from a municipality with a population of 750,000 or more;
- (2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;
- (3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;
- (4) an elected official from a municipality with a population of less than 25,000;
- (5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;
- (6) an official from a municipality or county solid waste agency;
- (7) a representative from a private environmental conservation organization;
- (8) a representative from a public solid waste district or authority;
- (9) a representative from a planning region;
- (10) a representative of the financial community;



- (11) a representative from a solid waste management organization composed primarily of commercial operators;
- (12) two persons representing the public who would not otherwise qualify as members under this section;
- (13) a registered waste tire processor;
- (14) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities;
- (15) a solid waste professional with experience managing or operating a commercial solid waste landfill; and
- (16) a person who is experienced in the management and operation of a composting or recycling facility or an educator with knowledge of the design and management of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 3.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.95, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 1, eff. Sept. 1, 1997.

Sec. 363.042. TERMS; VACANCIES. (a) Advisory council members serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) The commission shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications as required under Section 363.041 for the person who previously held the vacated position.

(c) A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only while the person continues to qualify for the category from which the person is appointed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.96, eff. Sept. 1, 1995.

Sec. 363.043. PRESIDENT. (a) The commission chairman shall appoint one member as advisory council president.

(b) The advisory council president serves for a term of two years expiring August 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.97, eff. Sept. 1, 1995.

Sec. 363.044. PAYMENT OF AND REIMBURSEMENT FOR EXPENSES. (a) Each advisory council member is entitled to compensation and reimbursement of travel expenses incurred by the member while conducting the business of the advisory council, as provided in the General Appropriations Act.

(b) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.98, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 2, eff. Sept. 1, 1997.

Sec. 363.045. MEETINGS. (a) The advisory council shall adopt and may amend procedures for the conduct of advisory council business.

(b) The advisory council shall hold at least one meeting every three months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.046. DUTIES. The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the executive director and the commission on matters relating to municipal solid waste management;

(3) recommend legislation to the commission to encourage the efficient management of municipal solid waste;

(4) recommend policies to the commission for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by

Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants; and

(5) recommend to the executive director special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS**

Sec. 363.061. COMMISSION RULES; APPROVAL OF REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The commission shall adopt rules relating to regional and local solid waste management plans, including procedures for review and criteria for approval of those plans.

(b) The commission by rule shall require as criteria for approval of a regional or local solid waste management plan that the plan reflect consideration of the preference of municipal solid waste management methods under Section 361.022 (Solid Waste Disposal Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

Sec. 363.0615. RESPONSIBILITY FOR REGIONAL PLANNING. (a) A council of governments has primary responsibility for the regional planning process.

(b) A planning region may be divided into subregions as part of the regional planning process. If a planning region is divided into subregions, the council of governments with jurisdiction in the planning region may assist the local governments constituting a subregion to develop a joint local solid waste management plan that provides for solid waste services for solid waste generated within that subregion.

(c) A council of governments may:

(1) employ personnel necessary to carry out the regional planning process, including an administrator for each subregion if subregions are established; and

(2) adopt rules necessary to carry out responsibilities concerning the regional planning process.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(b), eff. Sept. 6, 1990.

Sec. 363.0616. PREPARATION OF REGIONAL PLAN BY OTHER PUBLIC AGENCY IN CERTAIN REGIONS. (a) In a 10-county region with a population of less than 300,000, a council of governments is not required to prepare a regional solid waste management plan for that region if a public agency other than a municipality or county has received state funds for that purpose and has prepared a plan that has been approved by the state agency that administered the state funds.

(b) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 267, Sec. 1, eff. June 5, 1991.

Sec. 363.062. REGIONAL SOLID WASTE MANAGEMENT PLAN. (a) A planning region shall develop a regional solid waste management plan as provided by Section 363.0635 that must conform to the state solid waste management plan.

(b) A regional solid waste management plan shall be submitted to the commission for review.

(c) If the commission determines that a regional solid waste management plan conforms to the requirements adopted by the commission, the commission shall consider the regional solid waste management plan for approval.

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the commission on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The commission may not require a planning region to submit to the commission information previously submitted to the commission by the planning region in an earlier plan or report.

(e) If the commission determines that a regional solid waste management plan does not conform to the requirements adopted by the

commission, the commission shall give written notice to the planning region of each aspect of the plan that must be changed to conform to commission requirements. After the changes have been made in the plan as provided by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved regional solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(a), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.09, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.100, eff. Sept. 1, 1995.

Sec. 363.063. LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A local government shall develop a local solid waste management plan as provided by Section 363.0635.

(b) A local solid waste management plan must conform to the adopted regional solid waste management plan that covers the area in the local government's jurisdiction.

(c) A local solid waste management plan shall be submitted to the commission for review. If the commission determines that the plan conforms to the requirements adopted by the commission, the commission shall consider the plan for approval.

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the commission on the progress of its municipal solid waste management program and recycling activities implemented under this section. The commission may not require a local government to submit to the planning region or to the commission information previously submitted to the planning region or commission by the local government in an earlier plan or report.

(e) If the commission determines that a local solid waste management plan does not conform to the requirements adopted by the commission, the commission shall give written notice to the local government of each aspect of the plan that must be changed to conform to commission requirements. After changes are made in the plan as requested by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved local solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(c), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.101, eff. Sept. 1, 1995.

Sec. 363.0635. SCHEDULE FOR ADOPTION OF PLANS. (a) The commission shall establish a time schedule by which each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in those planning regions shall develop local solid waste management plans as required by this section.

(b) The time schedule shall be based on the availability of funds to provide financial assistance to planning regions and local governments as prescribed by Sections 363.091 through 363.093 for the development of those plans.

(c) Unless otherwise required by federal law or federal regulations, a planning region or local government is not required to develop a solid waste management plan until after the date on which funds are provided to that planning region or local government by the commission as prescribed by Sections 363.091 through 363.093 for the development of plans.

(d) Each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in that planning region shall develop local solid waste management plans in accordance with the time schedule established by the commission and as provided by this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(d), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.102, eff. Sept. 1, 1995.

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A regional or local solid waste management plan must:

- (1) include a description and an assessment of current

efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(8) establish recycling rate goals appropriate to the area covered by the plan;

(9) recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) include an inventory of municipal solid waste landfill units, including:

(A) landfill units no longer in operation;

(B) the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(C) a map showing the approximate boundaries of each former landfill unit, if the exact boundaries are not known;

(D) the current owners of the land on which the former

landfill units were located; and

(E) the current use of the land;

(11) assess the need for new waste disposal capacity; and

(12) include a public education program.

(b) If the boundaries of a municipal solid waste unit that is no longer operating are known to be wholly on an identifiable tract, the council of governments for the area in which the former landfill unit is located shall notify the owner of land that overlays the former landfill unit of the former use of the land and shall notify the county clerk of the county or counties in which the former landfill unit is located of the former use. The notice to the county clerk must include:

(1) a description of the exact boundaries of the former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(2) a legal description of the parcel or parcels of land in which the former landfill unit is located;

(3) notice of the former landfill unit's former use; and

(4) notice of the restrictions on the land imposed by this subchapter.

(c) The county clerk shall record the descriptions and notices submitted by a council of governments under Subsection (b). The county clerk may prescribe the method of arranging and indexing the descriptions and notices. The county clerk shall make the descriptions and notices available for public inspection.

(d) The municipalities and counties within each council of governments shall cooperate fully in compiling the inventory of landfill units.

(e) Each council of governments shall provide a copy of the inventory of municipal solid waste landfill units to the commission and to the chief planning official of each municipality and county in which a unit is located. The commission and the officials shall make the inventory available for public inspection.

(f) The commission may grant money from fees collected under Section 361.013 to a municipality or association of municipalities for the purpose of conducting the inventory required by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(e), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 238, Sec. 1, eff. Sept. 1,



1991; Acts 1991, 72nd Leg., ch. 303, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 770, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.103, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.01, eff. Jan. 11, 2004.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1276 (H.B. 1435), Sec. 5, eff. September 1, 2013.

Sec. 363.065. PLANNING PROCESS; PLANNING AREA. (a) A regional or local solid waste management plan must result from a planning process that:

(1) is related to proper management of solid waste in the planning area under consideration; and

(2) identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives.

(b) A regional solid waste management plan must consider the entire area in an identified planning region.

(c) A local solid waste management plan must consider all the area in the jurisdiction of one or more local governments but may not include an entire planning region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.066. CONFORMITY WITH REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) On the adoption of a regional or local solid waste management plan by commission rule, public and private solid waste management activities and state regulatory activities must conform to that plan.

(b) The commission may grant a variance from the adopted plan under procedures and criteria adopted by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(f), eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.104, eff. Sept.

1, 1995.

Sec. 363.067. STUDY REQUIRED FOR RESOURCE RECOVERY OR OTHER SOLID WASTE MANAGEMENT SYSTEMS. (a) To develop programs to implement regional or local solid waste management plans or other solid waste management alternatives that include resource recovery, a study must be made to determine feasibility and acceptance of the programs.

(b) The study shall be conducted in three phases:

- (1) a screening study;
- (2) a feasibility study; and
- (3) an implementation study.

(c) Public agencies that conduct all or part of one or more phases may qualify for assistance to accomplish other phases or parts of phases.

(d) After each phase, the governing body shall determine whether to proceed to the next phase.

(e) A study may not include final design and working drawings of any request for proposals for project facilities or operations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.068. SCREENING STUDY. (a) A screening study must provide a survey and assessment of the various factors affecting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination of whether those systems are potentially successful alternatives to existing systems.

(b) The survey and assessment must include:

- (1) the amount and characteristics of available waste;
- (2) the suitability and economics of existing solid waste management systems;
- (3) institutional factors affecting potential alternatives;
- (4) technologies available;
- (5) identification of potential material and energy markets;
- (6) economics of alternative systems; and
- (7) interest of the local citizenry in available

alternatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.069. FEASIBILITY STUDY. A feasibility study must provide an evaluation of alternatives that:

- (1) identifies current solid waste management practices and costs;
- (2) analyzes the waste stream and its availability by composition and quantity;
- (3) identifies potential markets and obtains statements of interest for recovered materials and energy;
- (4) identifies and evaluates alternative solid waste management systems;
- (5) provides an assessment of potential effects of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;
- (6) conducts and evaluates results of public hearings or surveys of local citizens' opinions; and
- (7) makes recommendations on alternatives for further consideration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.070. IMPLEMENTATION STUDY. An implementation study must:

- (1) provide a recommended course of action for a public agency;
- (2) provide for the collection and analysis of data;
- (3) identify and characterize solid waste problems and issues;
- (4) determine waste stream composition and quantity;
- (5) identify and analyze alternatives;
- (6) evaluate risk elements of alternatives;
- (7) identify and solidify markets;
- (8) make site analyses;
- (9) evaluate financing options and recommend preferred methods of financing;
- (10) evaluate the application of resource recovery

technologies;

(11) identify and discuss potential effects of alternative systems;

(12) provide for public participation and recommend preferred alternatives; and

(13) provide for implementation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. PLANNING FUND AND TECHNICAL ASSISTANCE FUND**

Sec. 363.091. MUNICIPAL SOLID WASTE MANAGEMENT PLANNING FUND.

(a) The municipal solid waste management planning fund is in the state treasury.

(b) In addition to money appropriated by the legislature, money received from other sources, including money received under contracts or agreements entered into under Section 363.116, shall be deposited to the credit of the planning fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.092. PLANNING FUND USE; FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS AND PLANNING REGIONS. (a) The executive director shall administer the financial assistance program and the planning fund under the commission's direction.

(b) The commission shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(c) The commission shall use the planning fund to provide financial assistance to:

(1) local governments and planning regions to develop regional and local solid waste management plans;

(2) public agencies and planning regions to prepare screening, feasibility, and implementation studies; and

(3) local governments and planning regions for costs of developing and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

(d) The commission shall use at least 90 percent of the money appropriated to it for the planning fund to provide financial assistance, and not more than 10 percent of the total funds

appropriated to the commission for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(e) The planning fund may not be used for construction or to prepare final design and working drawings, acquire land or an interest in land, or pay for recovered resources.

(f) The commission by rule shall allocate a specific percentage of money provided under Subsection (c)(1) to be used to develop plans for community household hazardous waste collection programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 238, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.105, eff. Sept. 1, 1995.

Sec. 363.093. APPLICATION FOR FINANCIAL ASSISTANCE. (a) An applicant for financial assistance from the planning fund must agree to comply with:

- (1) the state solid waste management plan;
- (2) the commission's municipal solid waste management rules; and
- (3) other commission requirements.

(b) The commission may not authorize release of funds under a financial assistance application until the applicant furnishes to the commission a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

- (1) the applicant will comply with the financial assistance program's provisions and commission requirements;
- (2) the funds will be used only for the purposes for which they are provided;
- (3) regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy; and
- (4) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(c) Financial assistance provided by the commission to a public agency or planning region must be matched at least equally by funds

provided by the recipient, except that this matching requirement does not apply if the recipient is a council of governments created under Chapter 391, Local Government Code, or a municipality or county.

(d) The priority given to applicants in receiving financial assistance must be determined by:

- (1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;
- (2) the needs of the state;
- (3) the applicant's financial need; and
- (4) the degree to which the proposed program will result in improvements that meet the requirements of state, regional, and local solid waste management plans.

(e) The commission may approve an application for financial assistance if:

- (1) the application is consistent with the rules adopted by the commission under Section 363.092(b); and
- (2) the commission finds that the applicant requires state financial assistance and that it is in the public interest to provide the financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 737, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.106, eff. Sept. 1, 1995.

Sec. 363.094. MUNICIPAL SOLID WASTE RESOURCE RECOVERY APPLIED RESEARCH AND TECHNICAL ASSISTANCE FUND. (a) The municipal solid waste resource recovery applied research and technical assistance fund is in the state treasury.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The technical assistance fund shall be used to:

- (1) accomplish applied research and development studies; and
- (2) provide technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(d) The executive director shall administer the technical assistance fund under the commission's direction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.107, eff. Sept. 1, 1995.

Sec. 363.095. USE OF TECHNICAL ASSISTANCE FUND. (a) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must comply with:

- (1) the state solid waste management plan;
- (2) the commission's municipal solid waste management rules; and
- (3) other commission policy requirements.

(b) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided may include:

- (1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for those systems;
- (2) an evaluation of state of the art waste reduction systems and waste-to-energy systems that include steam generation and electrical production;
- (3) establishment and evaluation of a pilot source separation and recycling project;
- (4) feasibility studies of appropriate technology that may be applicable to several local governments for the improvement of solid waste management systems;
- (5) cost and economic comparisons of alternative solid waste management systems;
- (6) an evaluation of available markets for energy and recovered materials;
- (7) an evaluation of the availability of recovered materials and energy resources for new market opportunities; and
- (8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(c) The commission may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.108, eff. Sept. 1, 1995.

**SUBCHAPTER F. LOCAL SOLID WASTE SERVICES AND REGULATION**

Sec. 363.111. ADOPTION OF RULES BY PUBLIC AGENCY. (a) A governing body may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

(b) The rules may not authorize any activity, method of operation, or procedure prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules or regulations of the commission or other state or federal agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.109, eff. Sept. 1, 1995.

Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid waste will not be prohibited.

(b) The ordinance or order must be published for two consecutive weeks in a newspaper of general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.

(c) The governing body of a municipality or county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that municipality or county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(d) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance or order authorized by Subsection



(a), unless the governing body of the municipality or county violated Subsection (c) in passing the ordinance or order. The commission by rule may establish procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance or order.

(e) The powers specified by this section may not be exercised by the governing body of a municipality or county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.110, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 4, eff. Sept. 1, 1999.

Sec. 363.113. ESTABLISHMENT OF SOLID WASTE MANAGEMENT SERVICES. Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.114. RESOURCE RECOVERY SERVICE; FEES. (a) A public agency may offer a resource recovery service to persons in its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a resource recovery service, a public agency, after notice and hearing, may suspend service provided by any utility owned or operated by the public agency to a person who is delinquent in payment of those fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.115. TAX EXEMPT STATUS OF CERTAIN RESOURCE RECOVERY SYSTEMS. A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from property taxes of any municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.116. AUTHORITY TO ENTER CONTRACTS CONCERNING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

(b) A home-rule municipality's charter provision restricting the duration of a municipal contract does not apply to a municipal contract that relates to solid waste management services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.117. SOLID WASTE MANAGEMENT SERVICE CONTRACTS. Under a solid waste management service contract, a public agency may:

- (1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems;
- (2) contract with a person or other public agency to manage solid waste for that person or agency;
- (3) contract with a person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;
- (4) contract with a person or other public agency for the operation of all or any part of a solid waste management system, including a resource recovery system;
- (5) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;
- (6) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:
  - (A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the public agency a solid waste management system or part of a solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(7) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at a permitted solid waste management facility, including a resource recovery facility, provided the contract may specify:

(A) the minimum quantity and quality of solid waste to be provided by the public agency; and

(B) the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(8) contract with a person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(9) contract with a person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.118. INDUSTRIAL DEVELOPMENT CORPORATIONS. (a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) If the system is located in the public agency's boundaries,

the corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.16, eff. April 1, 2009.

Sec. 363.119. FUNDING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract may also be made from revenues of the public agency's solid waste, water, sewer, electric, or gas system or any combination of utility systems.

(d) As a source of payment or as the sole source of payment, a public agency may use and pledge available revenues or resources for and to the payment of amounts due under contracts and may enter into covenants concerning those sources of payment to assure their availability if required.

(e) A public agency may establish, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the public agency, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. The public agency may use and pledge those fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amounts sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or part of the costs of providing solid

waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER G. BONDS**

Sec. 363.131. AUTHORITY TO ISSUE BONDS. (a) A public agency may issue bonds in the name of the public agency to acquire, construct, improve, enlarge, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.132. TERMS; FORM. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years after the date of issuance and shall bear interest at a rate permitted by state law.

(c) A public agency's bonds and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be:

(1) issued registrable as to principal or as to principal and interest; and

(2) made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner, and under the terms, and shall be signed and executed, as provided by the governing body in the resolution or order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.133. BOND PROVISIONS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding

bonds, the governing body may:

(1) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the physical property of the solid waste management system, the revenue of which is pledged.

(b) In the orders or resolutions authorizing the issuance of bonds, the governing body may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued; and

(2) include other provisions as the governing body may determine.

(c) The governing body may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.134. APPROVAL AND REGISTRATION. (a) A public agency shall submit bonds issued by the public agency and records relating to their issuance to the attorney general for examination as to their validity. If the bonds are secured by a pledge of proceeds from a contract, the public agency shall submit to the attorney general for examination a copy of the contract and a copy of the records relating to the contract.

(b) If the attorney general finds that the bonds have been authorized and a contract entered into in accordance with law, the attorney general shall approve the bonds, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.135. BOND PAYMENT AND SECURITY. A public agency may pay the principal of and interest on bonds:

(1) from the levy and collection of taxes on all taxable property in the public agency's boundaries if the public agency is authorized by law to levy and collect property taxes;

(2) by pledging all or part of the designated revenues from the ownership or operation of physical property of a solid waste management system, including a resource recovery system, or from a contract entered into by a public agency under this chapter; or

(3) from other income of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.136. BOND ELECTION. Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at an election ordered for that purpose. A bond election shall be held in the manner provided by law for other bond elections of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.137. OTHER SECURITY. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical property of a solid waste management system, including a resource recovery system, of the public agency and rights appurtenant to that property.

(b) The deed of trust or mortgage lien may give the trustee the power to operate the property, sell the property to pay the debt, or take any other action to secure the bonds. A purchaser at a sale under a deed of trust or mortgage lien is the absolute owner of the property and rights purchased.

(c) Regardless of any deed of trust or mortgage lien under Subsection (a), the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture; and

(3) provide for investment of the public agency's funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.138. BOND SALE AND EXCHANGE. (a) A public agency may sell bonds at a public or private sale at a price and on terms determined by the governing body.

(b) The public agency may exchange its bonds for property or an interest in property that its governing body considers necessary or convenient to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.139. INVESTMENT AND USE OF PROCEEDS. (a) Money may be set aside out of bond proceeds to provide for:

- (1) interest to accrue on the bonds;
- (2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and
- (3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.140. REFUNDING BONDS. (a) A public agency may issue refunding bonds to refund all or part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds:

- (1) mature serially or otherwise not more than 50 years after the date of issuance and bear interest at a rate permitted by state law; and
- (2) may be payable from the same source as the bonds being refunded or from other additional sources.



(c) Refunding bonds must be approved by the attorney general in the same manner as other bonds.

(d) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the order or resolution authorizing the refunding bonds provides that their proceeds be deposited in the place where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of and interest on the original bonds up to their maturity date or to their option date if the bonds are called for payment before maturity according to their terms.

(e) A public agency may refund bonds in one or several installments.

(f) Instead of the method provided by this section, a public agency may refund bonds, notes, or other obligations as provided by general law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.141. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Public agency bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, or other political subdivision of the state and other public funds of the state, including the permanent school fund.

(b) Public agency bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their value, if

accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.142. TAX STATUS OF BONDS. Since a public agency is a public entity performing an essential public function, bonds issued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by a municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.143. FEES FOR SERVICES. (a) While bonds are outstanding, the governing body may adopt and collect fees for services furnished or made available by the solid waste management system, including a resource recovery system.

(b) The fees must be adequate to provide and maintain the funds created by the resolution authorizing the bonds and to pay:

- (1) operational costs or expenses allocable to the solid waste management system, including a resource recovery system; and
- (2) the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.144. ADJUSTMENT OF RATES FOR ADEQUATE REVENUE. A public agency shall adopt and adjust the rates charged for solid waste management services so that revenues, together with taxes levied to support the services, will be sufficient to pay:

- (1) the expense of operating and maintaining the solid waste management system, including a resource recovery system;
- (2) the public agency's obligations under a contract; and
- (3) the public agency's obligations under and in connection with bonds issued that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.145. BOND ANTICIPATION NOTES. (a) A public agency may declare an emergency if funds are not available to pay the principal of or interest on the public agency's bonds issued under this chapter.

(b) The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by state law and shall mature within one year of the date of issuance.

(c) The bond anticipation notes may be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of bond anticipation notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 364. COUNTY SOLID WASTE**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 364.001. SHORT TITLE. This chapter may be cited as the County Solid Waste Control Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.002. PURPOSE. The purpose of this chapter is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.003. DEFINITIONS. In this chapter:

(1) "Composting" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(2) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Public agency" means a district, municipality, regional planning commission created under Chapter 391, Local

Government Code, or other political subdivision or state agency authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(4) "Sanitary landfill" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(5) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(6) "Solid waste disposal system" means a plant, composting process plant, incinerator, sanitary landfill, or other works and equipment that are acquired, installed, or operated to collect, handle, store, treat, neutralize, stabilize, or dispose of solid waste, and includes the sites.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 124, eff. Sept. 1, 1991.

#### **SUBCHAPTER B. COUNTY SOLID WASTE MANAGEMENT**

Sec. 364.011. COUNTY ADOPTION OF SOLID WASTE RULES. (a) Subject to the limitation provided by Sections 361.151 and 361.152 (Solid Waste Disposal Act), a commissioners court by rule may regulate solid waste collection, handling, storage, and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality.

(b) A county, in making any rules, including those under the licensing power granted by Chapter 361 (Solid Waste Disposal Act), may not impose an unreasonable requirement on the disposal of the solid waste in the county not warranted by the circumstances.

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas Natural Resource Conservation Commission.

(d) A county may institute legal proceedings to enforce its rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.034, eff. Aug. 12, 1991.

Sec. 364.012. PROHIBITING SOLID WASTE DISPOSAL IN COUNTY. (a)

The county may prohibit the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare.

(b) To prohibit the disposal of municipal or industrial solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which municipal or industrial solid waste disposal is not prohibited.

(c) An ordinance required by Subsection (b) may be passed on first reading, but the proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considers the proposed ordinance. The publication must contain:

(1) a statement of the time, place, and date that the commissioners court will consider the proposed ordinance; and

(2) notice that an interested citizen of the county may testify at the hearing.

(d) A public hearing must be held on a proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.

(e) The commissioners court of a county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(f) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance, unless the county violated Subsection (e) in passing the ordinance. The commission by rule may specify the procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance.

(g) The powers specified by this section may not be exercised by a county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.035, eff. Aug. 12, 1991; Acts 1999, 76th Leg., ch. 570, Sec. 5, eff. Sept. 1, 1999.

Sec. 364.013. COUNTY AUTHORITY. A county may:

(1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;

(2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;

(3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;

(4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and

(5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.014. ACQUISITION OF PROPERTY. (a) A county may acquire by purchase, lease, gift, condemnation, or any other manner and may own, maintain, use, and operate property or an interest in property necessary or convenient to the exercise of the powers and purposes provided by this chapter.

(b) The power of eminent domain is restricted to the county and may be exercised in the manner provided by law.

(c) A county may not exercise the power of eminent domain to acquire real property under this section if that power conflicts with a corporation's power of eminent domain as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.015. DUMPING OR GARBAGE DISPOSAL GROUNDS. The commissioners court shall determine the consideration to be paid to acquire real property on which to locate dumping or garbage disposal

grounds. In determining where to locate dumping or garbage disposal grounds, the commissioners court shall consider:

- (1) the convenience of the people to be served; and
- (2) the general health of, and the annoyance to, the community to be served by the dumping or garbage disposal grounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.016. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of a county shall be accomplished at the sole expense of the county, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. SOLID WASTE MANAGEMENT SYSTEMS AND SERVICES CONTRACTS**

Sec. 364.031. PUBLIC AGENCY CONTRACTS. (a) A public agency may contract with another public agency or a private contractor for the other public agency or private contractor to:

- (1) make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons; and
- (2) furnish solid waste collection, transportation, handling, storage, or disposal services through the other public agency's or private contractor's system.

(b) The contract may:

- (1) be for the duration agreed on by the parties;
- (2) provide that the contract remains in effect until bonds issued or to be issued by either public agency and refunding bonds issued for those original bonds are paid;
- (3) contain provisions to assure equitable treatment of parties who contract with the other public agency or private contractor for solid waste collection, transportation, handling, storage, or disposal services from the same solid waste disposal system;

(4) provide for the sale or lease to or use by the other public agency or private contractor of a solid waste disposal system owned or to be acquired by the public agency;

(5) provide that the other public agency or private contractor will operate a solid waste disposal system owned or to be acquired by the public agency;

(6) provide that the public agency is entitled to continued performance of services after the amortization of the other public agency's or private contractor's investment in the disposal system during the useful life of the system on payment of reasonable charges, reduced to take into consideration the amortization; and

(7) contain any other provisions and requirements the other public agency or private contractor and the public agency determine to be appropriate or necessary.

(c) The contract must provide the method to determine the amount the public agency will pay to the other public agency or private contractor.

(d) A municipality may provide in its contract that the other public agency or private contractor has the right to use the streets, alleys, and public ways and places in the municipality during the term of the contract.

(e) This section does not expand the authority granted to a county under Section 364.013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 486, Sec. 1, eff. June 12, 1995.

Sec. 364.032. PUBLIC AGENCY PAYMENTS. (a) Public agency payments to a county for solid waste collection, transportation, handling, storage, or disposal services may be made from income of the public agency's solid waste disposal fund as provided by the contract between the county and the public agency. The payments are an operating expense of the fund, and the revenues of the fund are to be applied toward those payments.

(b) Public agency payments to be made under the contract may be made from revenues of the public agency's water, sewer, electric, or gas system or a combination of utility systems.

(c) Unless the ordinance or resolution authorizing the outstanding bonds of the public agency expressly reserves the right



to accord contract payments a position of parity with, or a priority over, the public agency's bond requirements, the payments under a contract are subordinate to amounts required to be paid from the revenues of the utility system for principal of and interest on bonds of the public agency that are:

- (1) outstanding at the time the contract is made; and
- (2) payable from those revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.033. ALTERNATIVE PAYMENT PROCEDURE USING TAX FUNDS.

(a) A contract between a public agency and a county that is authorized by the public agency's governing body is an obligation against the public agency's taxing power to the extent provided by the contract if:

(1) the public agency holds an election according to applicable procedure provided by Chapter 1251, Government Code, relating to the issuance of bonds by a municipality; and

(2) at the election, it is determined that the public agency's governing body may levy an ad valorem tax to make any payments required of the public agency under the contract.

(b) Except for the levy of a tax under this section, an election is not required for the exercise of a power granted by this chapter.

(c) Only qualified voters of the public agency are entitled to vote at an election held under this section, and except as otherwise provided by this section and by Chapter 1251, Government Code, the Election Code governs an election under this section.

(d) If the alternative procedure for payment provided by this section is followed, payments under the contract may be:

(1) payable from and are solely an obligation against the taxing power of the public agency; or

(2) payable both from taxes and from revenues as provided by the contract.

(e) If the alternative procedure of public agency payment to a county for disposal services provided by this section is not followed, the county or a holder of county bonds is not entitled to demand payment of the public agency's obligation from funds raised or to be raised by taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.270, eff. Sept. 1, 2001.

Sec. 364.034. SOLID WASTE DISPOSAL SERVICE; FEES. (a) A public agency or a county may:

- (1) offer solid waste disposal service to persons in its territory;
- (2) require the use of the service by those persons;
- (3) charge fees for the service; and
- (4) establish the service as a utility separate from other utilities in its territory.

(b) A fee for a service provided under this section may be collected by:

- (1) the county;
- (2) a private or public entity that contracts with the county to provide the service; or
- (3) another private or public entity that contracts with the county to collect the fees.

(c) A county may contract with a public or private utility to collect a fee for a service provided under this section. The contract may:

- (1) require the billing of the fee within the bill for other utility services;
- (2) allow a fee to be paid to the utility for billing and collecting the fee;
- (3) require a system of accounting for fees collected by an entity other than the county; and
- (4) contain other terms as agreed to by the parties.

(d) To aid enforcement of fee collection for the solid waste disposal service:

- (1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid; and
- (2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully

paid.

(e) Except as provided by Subsections (f), (g), and (h), this section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a franchise it grants or a contract it enters into for solid waste collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are stopped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a

construction project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1238, Sec. 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 271, Sec. 2, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1394 (H.B. 1251), Sec. 1, eff. June 15, 2007.

Sec. 364.035. PUBLIC AGENCY DUTY TO ADJUST RATES CHARGED. (a) A public agency shall establish, maintain, and adjust the rates charged by the public agency for solid waste disposal services if:

(1) the public agency executes a contract with a county under this chapter; and

(2) the payments under the contract are to be made either wholly or partly from the revenues of the public agency's solid waste disposal fund.

(b) The revenues of the public agency's solid waste disposal fund, and any taxes levied in support, must be sufficient to pay:

(1) the expense of operating and maintaining the solid waste disposal service or system; and

(2) the public agency's obligations to the county under the contract and in connection with bonds issued or that may be issued that are secured by revenues of the solid waste disposal service or system.

(c) A contract between a public agency and a county may require the use of consulting engineers and financial experts to advise the public agency whether and at what time rates are to be adjusted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.036. AUTHORITY TO PROVIDE DISPOSAL SERVICES TO MORE THAN ONE PERSON. A contract or group of contracts under this chapter may provide that:

(1) a county may render concurrently to more than one person services relating to the construction or operation of all or part of a solid waste disposal system; and

(2) the cost of the services will be allocated among the

several persons as determined by the contract or group of contracts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.037. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICES FEES.

(a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

(1) another county or public agency that provides solid waste disposal services under this subchapter;

(2) a municipality that operates a utility system, as defined by Section 552.001, Local Government Code; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a county or public agency:

(1) may refuse to provide solid waste disposal services to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the solid waste disposal services the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

Added by Acts 2003, 78th Leg., ch. 271, Sec. 3, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.77(2), eff. April 1, 2009.

**SUBCHAPTER D. BONDS**

Sec. 364.051. AUTHORITY TO ISSUE BONDS. (a) To acquire, construct, improve, enlarge, and repair all or part of a solid waste disposal system, a county may issue bonds payable:

(1) from and secured by a pledge of all or part of the revenues to accrue under a contract entered into under this chapter; and

(2) from other income pledged by the county.

(b) Pending issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of the definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.052. TERMS; FORM. (a) Bonds issued under this chapter must be in the form and denomination and bear the rate of interest prescribed by the commissioners court.

(b) The bonds may be:

(1) sold at a public or private sale at a price and on the terms determined by the commissioners court; or

(2) exchanged for property or an interest in property determined by the commissioners court to be necessary or convenient to the purposes authorized by this chapter.

(c) The bonds are investment securities under Chapter 8, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.053. APPROVAL AND REGISTRATION. (a) A county may submit bonds that have been authorized by the commissioners court and any record relating to their issuance to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a contract between the county and a public agency, the county may submit to the attorney general a copy of the contract and the proceedings of the public agency authorizing the contract.

(b) If the attorney general finds that the bonds have been authorized and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and

the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and the contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.054. DISTRICT BOND VALIDATION BY SUIT. (a) As an alternative for, or in addition to, the procedure provided by Section 364.053, the board of directors of a district may validate its bonds by filing suit under Chapter 1205, Government Code.

(b) The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract made by the district and one or more public agencies, the petition must allege that fact and the notice of the suit must mention that allegation and each public agency's fund or revenues from which the contract is payable.

(d) The suit is a proceeding in rem, and the judgment is res judicata as to the validity of the bonds and any contract and the pledge of revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.271, eff. Sept. 1, 2001.

Sec. 364.055. INVESTMENT AND USE OF PROCEEDS. (a) The commissioners court may set aside from proceeds of a bond sale:

- (1) interest to accrue on the bonds;
- (2) administrative expenses to the estimated date when the solid waste disposal system will become revenue producing; and
- (3) reserve funds created by the resolution authorizing the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits as specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.056. REFUNDING OF BONDS. A county may refund bonds issued under this chapter on terms and conditions and bearing the rate of interest prescribed by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.057. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee; and
- (8) a sinking fund of a municipality, school district, or any other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or of a political subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.058. ADJUSTMENT OF RATES AND CHANGES TO MAINTAIN ADEQUATE REVENUE. If bonds are outstanding, the commissioners court shall establish, maintain, and collect rates and charges for services furnished or made available by the solid waste disposal system adequate to:

- (1) pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on the bonds; and
- (2) provide and maintain funds created by the resolution authorizing the bonds.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 365. LITTER**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 125, eff. Sept. 1, 1991.

#### **SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED**

Sec. 365.011. DEFINITIONS. In this subchapter:

- (1) "Approved solid waste site" means:
  - (A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;
  - (B) a solid waste site licensed by a county under Chapter 361; or
  - (C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.
- (2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.
- (3) "Commercial purpose" means the purpose of economic gain.
- (4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.
- (5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.
- (6) "Litter" means:
  - (A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or
  - (B) nondecayable solid waste, except ashes, that consists of:
    - (i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;
    - (ii) noncombustible waste material, including

glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, Sec. 1, eff. May 26, 1997.

Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a

railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under Subsection (a), (b), or (c) is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor under this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed 30 days;

or

(3) both such fine and confinement.

(e) An offense under Subsection (a), (b), or (c) is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200

pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally.

The statement shall include the hauler's valid Texas driver's license

number.

(p) It is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection with controlled burning the person was conducting in the area into which the lighted litter was discarded.

(q) The operator of a public conveyance in which smoking tobacco is allowed shall post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.

(r) If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28, Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, Sec. 2, eff. May 26, 1997; Acts 2001, 77th Leg., ch. 995, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 2, eff. September 1, 2011.

Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY. (a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.112, eff. Sept. 1, 1995.

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS. (a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 3, eff. Sept. 1, 1993.

Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS. (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing

party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY.

(a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a)

The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.



(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, Sec. 4, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 439, Sec. 1, eff. June 9, 1995.

#### **SUBCHAPTER C. SPECIAL PROVISIONS**

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE. The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS;  
CRIMINAL PENALTY. (a) The definitions provided by Section 365.011  
apply to this section.

(b) In this section, "beach" means an area in which the public  
has acquired a right of use or an easement and that borders on the  
seaward shore of the Gulf of Mexico or extends from the line of mean  
low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a  
county that has the Gulf of Mexico as one boundary, but does not  
apply to a beach located in that park.

(d) A person commits an offense if the person discards in a  
county park any junk, garbage, rubbish, or other refuse in a place  
that is not an officially designated refuse container or disposal  
unit.

(e) An offense under this section is a Class C misdemeanor  
unless it is shown on the trial of the defendant that the defendant  
has previously been convicted of an offense under this section, in  
which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY;  
CRIMINAL PENALTY. (a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more  
than 30 days on a person's property within 50 feet of a public  
highway in the county;

(2) provide for the removal and disposition of litter  
accumulated near a public highway in violation of an order adopted  
under this section; and

(3) provide for the assessment against a person who owns  
the property from which litter is removed under Subdivision (2) of  
the costs incurred by the county in removing and disposing of the  
litter.

(b) Before the commissioners court takes any action to remove  
or dispose of litter under this section, the court shall send a  
notice by certified mail to the record owners of the property on

which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 126, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.162, eff. Sept. 1, 1991.

Sec. 365.035. PROHIBITION ON POSSESSING GLASS CONTAINERS WITHIN BOUNDARY OF STATE-OWNED RIVERBED; PENALTIES. (a) In this section, "glass container" means a glass container designed to contain a beverage, including a bottle or jar.

(b) A person commits an offense if the person knowingly possesses a glass container within the boundaries of a state-owned riverbed in a county:

(1) that is located within 85 miles of an international border; and

(2) in which at least four rivers are located.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (b) that the person who possessed the glass container:

(1) did not transport the glass container into the boundaries of the riverbed;

(2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or

(3) is the owner of property adjacent to the section of the riverbed in which the person possessed the glass container.

(e) It is an exception to the application of Subsection (b) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research as authorized by:

(1) a governmental entity;

(2) a utility as defined by Section 11.004, Utilities Code;

(3) a retail public utility as defined by Section 13.002, Water Code;

(4) a power generation company as defined by Section 31.002, Utilities Code;

(5) a surface coal mining and reclamation operation, as defined by Section 134.004, Natural Resources Code; or

(6) a school-sponsored or university-sponsored educational activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1124 (H.B. 218), Sec. 1, eff. September 1, 2011.

## **CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 366.001. POLICY AND PURPOSE. It is the public policy of this state and the purpose of this chapter to:

(1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;

(2) authorize the commission or authorized agent to impose and collect a permit fee for:

(A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and

(B) tests, designs, and inspections of those systems;

(3) authorize the commission or authorized agent to impose a penalty for a violation of this chapter or a rule adopted under this chapter;

(4) authorize the commission to license or register certain persons; and

(5) allow the individual owner of a disposal system to install and repair the system in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 21, eff. Sept. 1, 2001.

Sec. 366.002. DEFINITIONS. In this chapter:

(1) "Authorized agent" means a local governmental entity authorized by the commission to implement and enforce rules under this chapter.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3), (4) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.

(5) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district, soil and water conservation district, or public health district.

(6) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(7) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a site on which any part of the system is located.

(8) "Owner" means a person who owns a building or other property served by an on-site sewage disposal system.

(9) "Sewage" means waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.038, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 589, Sec. 1 to 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1127, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.

Sec. 366.003. IMMUNITY. The commission, an authorized agent, or a designated representative is not liable for damages resulting from the commission's or authorized agent's approval of the installation and operation of an on-site sewage disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.004. COMPLIANCE REQUIRED. A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with this chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.005. NOTICE OF UTILITY SERVICE CONNECTIONS. (a) An electric utility shall compile a list weekly for each county in this state of the addresses located in an unincorporated area of the county at which the electric utility has made new electric service connections during the preceding week. The electric utility shall submit the list to the county judge of the county, or to a county officer or employee designated by the county judge, who shall forward the list to each authorized agent having jurisdiction over an area in which an address on the list is included. The authorized agent may

use the list for the purpose of implementing and enforcing rules under this chapter. This section does not apply to a reconnection of service to a location previously served.

(b) An electric utility may not be held liable for a claim arising from the provision of information under this section.

(c) Information provided by a utility under this section is confidential and not subject to disclosure under Chapter 552, Government Code, or otherwise, except as provided by this section.

(d) The county judge shall forward the list compiled under Subsection (a) to each appraisal district and each emergency communication district in the county.

(e) In this section:

(1) "Appraisal district" means a district established under Section 6.01, Tax Code.

(2) "Electric utility" means an investor-owned utility, electric cooperative corporation, river authority, or municipally owned utility that provides distribution service to retail customers of electricity.

(3) "Emergency communication district" means a district established under Chapter 772.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 15, Sec. 1, eff. May 3, 1999;  
Acts 1999, 76th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION AND AUTHORIZED AGENTS**

Sec. 366.011. GENERAL SUPERVISION AND AUTHORITY. The commission or authorized agents:

(1) have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and

(2) shall administer this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.012. RULES CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS.

(a) To assure the effective and efficient administration of this chapter, the commission shall:

(1) adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the:

(A) review and approval of on-site sewage disposal systems; and

(B) temporary waiver of a permit for an emergency repair; and

(2) adopt rules under this chapter that:

(A) encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal;

(B) address the separation of graywater, as defined by Section 341.039, in a residence served by an on-site sewage disposal system; and

(C) require on-site sewage disposal systems, including risers and covers, installed after September 1, 2012, to be designed to prevent access to the system by anyone other than:

(i) the owner of the system; or

(ii) a person described by Section 366.071(a) or

(b).

(b) In rules adopted under this chapter, the commission shall include definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

(1) justify variation in field size or in other standard requirements;

(2) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;

(3) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the commission or authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper operation of an on-site sewage disposal system; and

(4) make available general, operational information to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended



by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 22, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 689, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 220 (H.B. 240), Sec. 1, eff. September 1, 2011.

Sec. 366.013. INSTALLATION AND USE OF WATER SOFTENERS AND REVERSE OSMOSIS SYSTEMS. (a) Except as provided by Subsection (b), an owner may install or use a water softener that discharges effluent into an on-site sewage disposal system only if the installed water softener:

- (1) conserves water by design;
- (2) regenerates using a demand-initiated regeneration control device, commonly known as a DIR device; and
- (3) is clearly labeled as being equipped with a DIR device, with the label affixed to the outside of the system so that it may be inspected and easily read.

(b) An owner may use a water softener that discharges effluent into an on-site sewage disposal system and that does not meet the requirements of Subsection (a) if the water softener was installed before September 1, 2003. The owner must replace the water softener with a water softener that meets the requirements of Subsection (a) if the owner:

- (1) replaces the water softener; or
- (2) installs a new on-site sewage disposal system for the building or other property served by the existing system.

(c) An owner may install and use a point-of-use reverse osmosis system that discharges effluent into an on-site sewage disposal system.

(d) An owner may install and use a point-of-entry reverse osmosis system that discharges effluent into an on-site sewage disposal system if the calculated volume of effluent:

- (1) does not cause hydraulic overloading; or
- (2) has been adequately addressed in the design of the on-site sewage disposal system.

(e) This section does not apply to an aerobic, nonstandard, or proprietary on-site sewage treatment system unless the water softener drain line to the system bypasses the treatment system and flows into

the pump tank or directly into the discharge method.

(f) The commission by rule shall adopt and implement standards for the use of water softeners and reverse osmosis systems in a building or other property served by an on-site sewage disposal system.

Added by Acts 2003, 78th Leg., ch. 966, Sec. 1, eff. Sept. 1, 2003.

Sec. 366.014. DESIGNATED PERSON. Subject to the requirements of Section 366.071(b), the commission or an authorized agent may designate a person to:

- (1) review permit applications, site evaluations, or planning materials; or
- (2) inspect on-site sewage disposal systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 59, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 23, eff. Sept. 1, 2001.

Sec. 366.016. EMERGENCY ORDERS. The commission or authorized agent may issue an emergency order concerning an on-site sewage disposal system under Section 5.513, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 38, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.011, eff. September 1, 2009.

Sec. 366.017. REQUIRED REPAIRS; PENALTY. (a) The commission or authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property:

- (1) not later than the 30th day after the date on which the owner is notified by the commission or authorized agent of the

malfunctioning system if the owner has not been notified of the malfunctioning system during the preceding 12 months;

(2) not later than the 20th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system once during the preceding 12 months; or

(3) not later than the 10th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system at least twice during the preceding 12 months.

(b) The property owner must take adequate measures as soon as practicable to abate an immediate health hazard.

(c) The property owner may be assessed an administrative or a civil penalty under Chapter 7, Water Code, for each day that the on-site sewage disposal system remains unrepaired.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1127, Sec. 3, eff. Sept. 1, 1997.

#### **SUBCHAPTER C. DESIGNATION OF LOCAL GOVERNMENTAL ENTITY AS AUTHORIZED AGENT**

Sec. 366.031. DESIGNATION. (a) The commission shall designate a local governmental entity as an authorized agent if the governmental entity:

(1) notifies the commission that the entity wants to regulate the use of on-site sewage disposal systems in its jurisdiction;

(2) in accordance with commission procedures, holds a public hearing and adopts an order or resolution that complies with Section 366.032; and

(3) submits the order or resolution to the commission.

(b) The commission in writing may approve the local governmental entity's order or resolution, and the designation takes effect only when the order or resolution is approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.032. ORDER OR RESOLUTION; REQUIREMENTS. (a) The local governmental entity's order or resolution must:

(1) incorporate the commission's rules on abatement or prevention of pollution and the prevention of injury to the public health;

(2) meet the commission's minimum requirements for on-site sewage disposal systems; and

(3) include a written enforcement plan.

(b) If the order or resolution adopts more stringent standards for on-site sewage disposal systems than this chapter or the commission's standards and provides greater public health and safety protection, the authorized agent's order or resolution prevails over this chapter or the standards.

(c) An authorized agent must obtain commission approval of substantive amendments to the agent's order or resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.033. DELEGATION TO LOCAL GOVERNMENTAL ENTITIES. The commission shall delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.034. INVESTIGATION OF AUTHORIZED AGENTS. (a) The commission shall:

(1) conduct not more often than once a year an investigation of each authorized agent to determine the authorized agent's compliance with this chapter; and

(2) prepare an annual report concerning the status of the local governmental entity's regulatory program.

(b) If the commission determines that an authorized agent does not consistently enforce the commission's minimum requirements for on-site sewage disposal systems, the commission shall hold a hearing and determine whether to continue the designation as an authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.035. MANDATORY APPLICATION FOR AND MAINTENANCE OF DESIGNATION. A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent of the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.036. COUNTY MAP. (a) If the commission designates a local governmental entity as its authorized agent and if the entity intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court of the county in which the entity is located shall prepare a map of the county area outside the limits of municipalities. The entity shall give to the commissioners court a written notice of the entity's intention to apply for the assistance. The map must show the parts of the area in which the different types of on-site sewage disposal systems may be appropriately located and the parts in which the different types of systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. PERMITS; FEES**

Sec. 366.051. PERMITS. (a) A person must hold a permit and an

approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system.

(b) If the on-site sewage disposal system is located in the jurisdiction of an authorized agent, the permit is issued by the authorized agent; otherwise, the permit is issued by the commission.

(c) A person may not begin to construct, alter, repair, or extend an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a permit and approved plan from the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

- (1) is located on a tract of land of at least 100 acres in size;
- (2) produces not more than 5,000 gallons a day on an annual average basis;
- (3) is used only on a seasonal or intermittent basis; and
- (4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 20.03, eff. Sept. 1, 2001.

Sec. 366.0515. MAINTENANCE CONTRACT AND PERFORMANCE BOND. (a) Except as provided by Subsection (g), an authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system.

(b) Except as provided by Subsection (a), an authorized agent by order or resolution or the commission by rule may condition approval of a permit for an on-site sewage disposal system on the system's owner contracting for the maintenance of the system. If a maintenance contract is required, the owner of the on-site sewage disposal system must submit to the permitting authority:

(1) a signed contract for the maintenance of the on-site sewage disposal system; and

(2) if the on-site sewage disposal system is located in a county with a population of more than 2.8 million, a performance bond obtained from the person with whom the owner of the on-site sewage disposal system has contracted for maintenance of the system.

(c) A performance bond required by Subsection (b) must be:

(1) solely for the protection of the owner of the on-site sewage disposal system;

(2) conditioned on the faithful performance of the maintenance of the on-site sewage disposal system in accordance with plans, specifications, laws, regulations, and ordinances of the state and the authorized agent;

(3) in an amount reasonably related to the cost that the owner of the on-site sewage disposal system would incur if the maintenance company did not adhere to maintenance standards or comply with applicable statutes, rules, or ordinances;

(4) executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) in a form approved by the permitting authority; and

(6) payable to the owner of the on-site sewage disposal system.

(d) If the owner of the on-site sewage disposal system enters into a new maintenance contract or revises the original maintenance contract, the owner must submit a copy of the new or revised maintenance contract and a new performance bond to the permitting authority not later than the 30th day after the date on which the original contract terminates or is modified.

(e) The permitting authority may establish and collect a reasonable fee to cover the cost of administering the performance bond program.

(f) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(g) The owner of a single-family residence shall maintain the system directly or through a maintenance contract. If an authorized agent or the commission determines that an owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly has violated this chapter

or a rule adopted or order or permit issued under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the violation, shall correct the violation or enter into a contract for the maintenance of the system. If before the third anniversary of the date of the determination the owner is determined to have committed another violation of this chapter or a rule adopted under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the subsequent violation, shall enter into a contract for the maintenance of the system. An owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly and who violates this chapter or a rule adopted or order or permit issued under this chapter is also subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty may not exceed \$100.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(k) If, under Subsection (b), an authorized agent or the commission conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on the system's owner contracting for the maintenance of the system, the order, resolution, or rule may require the maintenance company to:

- (1) inspect the system at specified intervals;
- (2) submit a report on each inspection to the authorized agent or commission; and
- (3) provide a copy of each report submitted under Subdivision (2) to the system's owner.

(1) A maintenance company that violates a provision of an order, resolution, or rule described by Subsection (k) is subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding



Section 7.052, Water Code, the amount of the penalty for the first violation of that order, resolution, or rule is \$200, and the amount of the penalty for each subsequent violation is \$500.

(m) If a maintenance company violates an order, resolution, or rule described by Subsection (k) three or more times, the commission, in the manner provided by Subchapter G, Chapter 7, Water Code, may revoke the license or registration of the maintenance company or any person employed by the maintenance company issued under:

- (1) Section 26.0301, Water Code;
- (2) Chapter 37, Water Code; or
- (3) Section 366.071 of this code.

(n) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(o) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 4, eff. Sept. 1, 1997.  
Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. [2510](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. [2482](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. [2482](#)), Sec. 3, eff. September 1, 2007.

Sec. 366.052. PERMIT NOT REQUIRED FOR ON-SITE SEWAGE DISPOSAL ON CERTAIN SINGLE RESIDENCES. (a) Sections 366.051, 366.053, 366.054, and 366.057 do not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line.

(b) Effluent from the on-site sewage disposal system on a single residence:

- (1) must be retained in the specified limits;
- (2) may not create a nuisance; and
- (3) may not pollute groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.053. PERMIT APPLICATION. (a) Application for a permit must:

(1) be made on a form provided by the commission or authorized agent; and

(2) include information required by the commission or authorized agent to establish that the individual sewage disposal system complies with this chapter and rules adopted under this chapter.

(b) The commission shall adopt rules and procedures for the submission, review, and approval or rejection of permit applications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.054. NOTICE FROM INSTALLER. An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system unless the installer notifies the commission or authorized agent of the date on which the installer plans to begin work on the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.055. INSPECTIONS. (a) The commission or authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to ensure that the on-site sewage disposal system is in substantial compliance with this chapter and the rules adopted under this chapter.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the commission or the authorized agent.

(c) A holder of a permit issued under this chapter shall notify the commission, the authorized agent, or a designated representative not later than the fifth working day before the proposed date of the operation of an installation that the installation is ready for inspection.

(d) The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the commission, the authorized agent, or a designated representative.

(e) An installation inspection shall be made not later than the

second working day, excluding holidays, after the date on which notification that the installation is completed and ready for inspection is given to the commission, the authorized agent, or a designated representative.

(f) The owner, owner's representative, or occupant of the property on which the installation is located shall give the commission, the authorized agent, or a designated representative reasonable access to the property at reasonable times to make necessary inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

(b) If a system is not approved under this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.057. PERMIT ISSUANCE. (a) The commission shall issue or authorize the issuance of permits and other documents.

(b) A permit and approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system must be issued in the name of the person who owns the system and must identify the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(c) The commission may not issue a permit to construct, alter, repair, or extend an on-site sewage disposal system if the issuance of a permit conflicts with other applicable laws or public policy under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.058. PERMIT FEE. (a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission at its discretion may provide variances to the uniform application of the permit fee.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 60, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.08, eff. Sept. 1, 2001.

Sec. 366.059. PERMIT FEE PAID TO DEPARTMENT OR AUTHORIZED AGENT. (a) The permit fee shall be paid to the authorized agent or the commission, whichever performs the permitting function.

(b) The commission may assess a reasonable and appropriate charge-back fee, not to exceed \$500, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:

(1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or

(2) has had its authorization as an authorized agent revoked by the commission.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

(d) The commission may not assess a charge-back fee to a local

governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 61, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.09, eff. Sept. 1, 2001.

#### **SUBCHAPTER E. REGISTRATION OF INSTALLERS**

Sec. 366.071. OCCUPATIONAL LICENSING AND REGISTRATION. (a) A person who constructs, installs, alters, extends, services, maintains, or repairs an on-site sewage disposal system or any part of an on-site sewage disposal system for compensation must hold a license or registration issued by the commission under Chapter 37, Water Code.

(b) A person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.

(c) A person who conducts preconstruction site evaluations, including visiting a site and performing a soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage disposal system must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas Board of Professional Engineers as an engineer.

(d) The commission may implement a program under Chapter 37, Water Code, to register persons who service or maintain on-site sewage disposal systems for compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 24.

Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. [2510](#)), Sec. 2, eff. September 1, 2006.

Acts 2005, 79th Leg., Ch. 1129 (H.B. [2510](#)), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 2, eff. September 1, 2007.

#### **SUBCHAPTER F. PENALTIES**

Sec. 366.092. INJUNCTION OR CIVIL SUIT. (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter, or any rule, permit, or other order of the commission issued pursuant to this chapter, an authorized agent or, at the request of the commission, the attorney general may bring a civil suit for:

- (1) mandatory or prohibitory injunctive relief, as warranted by the facts;
- (2) a civil penalty as provided by this chapter; or
- (3) both injunctive relief and civil penalty.

(b) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(4), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 7, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1127, Sec. 5, eff. Sept. 1, 1997.

Sec. 366.0922. COMMISSION ENFORCEMENT AT LOCAL GOVERNMENT REQUEST. A local government may request that the commission initiate an enforcement action under this chapter through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 6, eff. Sept. 1, 1997.

Sec. 366.0923. FEES AND COSTS RECOVERABLE. If an authorized agent or the state prevails in a suit under this subchapter, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 7, eff. Sept. 1,  
1997.

**CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH**

Sec. 367.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Commission on Environmental Quality.
- (2) "On-site wastewater treatment system" means a system of treatment devices or disposal facilities that:
  - (A) is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments;
  - (B) is located on the site where the sewage is produced; and
  - (C) produces not more than 5,000 gallons of waste a day.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.039, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.116, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 8.02, eff. September 1, 2011.

Sec. 367.007. ADMINISTRATION. (a) The commission may accept grants and donations from other sources to supplement the fees collected under Section 367.010. Grants and donations shall be deposited to the credit of the water resource management account and may be disbursed as the commission directs and in accordance with Section 367.008.

(b) Administrative and facilities support costs are payable from the water resources management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.041, eff. Dec. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.118, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.03, eff. September 1, 2011.

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The commission shall establish procedures for awarding competitive grants and disbursing grant money.

(b) The commission may award competitive grants to:

(1) support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

(c) The commission shall seek the advice of relevant experts when choosing research topics, awarding grants, and holding educational conferences associated with activities under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.042, eff. Dec. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.04, eff. September 1, 2011.

Sec. 367.009. APPROPRIATIONS. Money collected and appropriated for the purposes of this chapter shall be disbursed as the commission directs and in accordance with Section 367.008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.05, eff. September 1, 2011.



Sec. 367.010. FEES. (a) The commission and each county, municipality, public health department, and river authority shall collect a \$10 fee for each on-site wastewater treatment permit application processed.

(b) A county, municipality, public health department, or river authority that collects a fee shall forward the fee to the commission.

(c) The commission shall enforce the collection and forwarding of the fee.

(d) The fee proceeds shall be deposited to the credit of the water resources management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.119, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 3, eff. Aug. 27 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.06, eff. September 1, 2011.

**CHAPTER 368. COUNTY REGULATION OF TRANSPORTATION OF WASTE  
SUBCHAPTER A. TRANSPORTERS OF GREASE TRAP, SAND TRAP, AND SEPTIC  
WASTE**

Sec. 368.001. REGULATORY PROGRAM. The commissioners court of a county may establish a program regulating transporters of grease trap, sand trap, and septic waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.002. PARTICIPATION BY MUNICIPALITY IN REGULATORY PROGRAM. The commissioners court may enter into a contract with a municipality that provides the terms and conditions under which the municipality may participate in the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.003. PERMITS. The commissioners court of a county may:

- (1) require a permit for trucks that transport grease trap,

sand trap, and septic waste, including trucks serving unincorporated areas of the county;

(2) by order establish guidelines and procedures for issuing permits to trucks that transport grease trap, sand trap, and septic waste; and

(3) issue a single permit number that allows a municipality participating in the county regulatory program the option to add to that permit number a suffix unique to the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.004. INSPECTIONS. The commissioners court of a county may:

(1) coordinate with municipalities the inspection of trucks that transport grease trap, sand trap, and septic waste;

(2) by order establish guidelines and procedures to coordinate truck inspections; and

(3) assess an inspection fee sufficient to cover the cost to the county of providing the inspection service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.005. CONTRACTS. The commissioners court of a county may contract with a person to provide a service that is part of the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.006. FORMS. The commissioners court of a county may develop a single manifest form with a uniform manifest registration and numbering system to be used by the county and each participating municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. REGULATION AND LICENSING OF WASTE HAULERS**

Sec. 368.011. DEFINITIONS. In this subchapter:

(1) "Waste" means:

(A) animal and vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food;

(B) discarded paper, rags, cardboard, wood, rubber, plastics, yard trimmings, fallen leaves, brush materials, and similar combustible items; and

(C) discarded glass, crockery, tin or aluminum cans, metal items, and similar items that are noncombustible at ordinary incinerator temperatures.

(2) "Waste hauler" means a person who, for compensation, transports waste by the use of a motor vehicle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.012. COUNTY LICENSING AND REGULATION. To protect the public health, safety, or welfare, the commissioners court of a county with a population of less than 375,000 may by ordinance:

(1) require a waste hauler who transports waste in unincorporated areas of the county to be licensed by the county;

(2) establish requirements for obtaining and renewing a waste hauler license;

(3) impose a license issuance or renewal fee in an amount that generates annually the approximate amount of revenue needed to fund the licensing program for a year;

(4) establish standards governing the transportation of waste in unincorporated areas of the county;

(5) establish grounds for suspending or revoking a waste hauler license; and

(6) prescribe any other provisions necessary to administer the licensing program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 426, Sec. 1, eff. May 29, 1997.

Sec. 368.013. EXEMPTIONS FOR CERTAIN WASTE HAULERS. (a) This subchapter does not apply to an entity that transports:

(1) material as part of a recycling program; or

(2) salt water, drilling fluids, or other waste associated with the exploration, development, and production of oil, gas, or

geothermal resources.

(b) Except as provided by Subsection (c), a county may not require a waste hauler license to be held by a waste hauler:

(1) while transporting waste on behalf of a municipality or other governmental entity; or

(2) operating regularly in more than three counties.

(c) A county may require a waste hauler who transports waste on behalf of a municipality or other governmental entity to have a waste hauler license if the hauler deposits any part of that waste in a county other than the county in which all or part of the municipality or other governmental entity is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.014. BOND OR OTHER FINANCIAL ASSURANCE. (a) An applicant for a waste hauler license must execute a surety bond or provide other financial assurance that is payable for the use and benefit of the county or any other person harmed by the waste hauler's actions.

(b) The bond or other financial assurance must be in an amount the commissioners court considers necessary or desirable according to the risk of harm associated with the operation of the waste hauling business.

(c) A bond executed under this section must comply with the insurance laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.015. FEES. Fees or other money received by a county under the licensing program shall be deposited to the credit of the general fund of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.016. CONFLICT WITH OTHER REGULATIONS. If a requirement or standard established under Section 368.012 conflicts with state law, a rule adopted under state law, or a municipal ordinance or charter, the stricter provision prevails.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.017. INJUNCTION. A county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an ordinance the county adopts under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.018. CRIMINAL PENALTY. (a) If a county ordinance adopted under this subchapter defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor.

(b) A separate offense occurs on each day on which all the elements of the offense exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 369. PLASTIC CONTAINERS**

Sec. 369.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.
- (3) "Plastic bottle" means a plastic container that:
  - (A) has a neck smaller than the body of the container;
  - (B) is designed for a screw top, snap cap, or other closure; and
  - (C) has a capacity of not less than 16 fluid ounces or more than five gallons.
- (4) "Rigid plastic container" means a formed or molded container, other than a plastic bottle, that:
  - (A) is intended for single use;
  - (B) is composed predominantly of plastic resin;
  - (C) has a relatively inflexible finite shape or form; and
  - (D) has a capacity of not less than eight ounces or more than five gallons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.043, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.120, eff. Sept. 1, 1995.

Sec. 369.002. SYMBOLS FOR CERTAIN PLASTIC CONTAINERS. (a) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container.

(b) A plastic bottle or rigid plastic container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(c) The symbols used under this section must consist of a number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

- (1) 1 and PETE, representing polyethylene terephthalate;
- (2) 2 and HDPE, representing high density polyethylene;
- (3) 3 and V, representing vinyl;
- (4) 4 and LDPE, representing low density polyethylene;
- (5) 5 and PP, representing polypropylene;
- (6) 6 and PS, representing polystyrene; and
- (7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The commission may approve the use of another nationally or internationally recognized label coding system for special-purpose plastic bottles or rigid plastic containers which are components of motor vehicles in place of the symbols described by Subsections (c) and (d).

(f) The commission shall:

- (1) maintain a list of the symbols; and
- (2) provide a copy of that list to any person on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 99, Sec. 1, eff. May 7, 1993;  
Acts 1995, 74th Leg., ch. 76, Sec. 11.121, eff. Sept. 1, 1995.

Sec. 369.003. PENALTY. (a) A person who violates Section 369.002(a) or (b) is subject to a civil penalty not to exceed \$500 for each act of violation.

(b) If it appears that a person has violated or is violating Section 369.002, the attorney general or a district attorney, criminal district attorney, or county attorney shall institute and conduct a suit in the name of this state to recover the civil penalty imposed under this section.

(c) A civil penalty recovered under this section shall be deposited:

(1) in the state treasury if the attorney general brings the suit; or

(2) in the general fund of the county in which the violation occurred if a district attorney, criminal district attorney, or county attorney brings the suit.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991.

#### **CHAPTER 370. TOXIC CHEMICAL RELEASE REPORTING**

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Texas Toxic Chemical Release Reporting Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.002. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, and land

and all living things.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

(6) "Manufacture" means to produce, prepare, import, or compound a toxic chemical.

(7) "Person" means an individual, trust, firm, joint-stock company, corporation, including a government corporation, partnership, association, state, commission, municipality or other political subdivision of a state, or interstate body.

(8) "Process" means to prepare a toxic chemical, after its manufacture, for distribution in commerce:

(A) in the same form or physical state as, or in a different form or physical state from, the form in which the chemical was received by the person preparing the chemical; or

(B) as part of an article containing the toxic chemical.

(9) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing into the environment any toxic chemical. The term includes the abandonment or discarding of barrels, containers, and other closed receptacles of any toxic chemical.

(10) "Threshold amount" means the amount established by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(11) "Toxic chemical" means a chemical designated as a toxic chemical by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(12) "Toxic chemical release form" means the form published by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.044, eff.



Aug. 12, 1991.

Sec. 370.003. TOXIC CHEMICAL RELEASE FORM REQUIRED OF CERTAIN FACILITIES. (a) The owner or operator of a facility shall submit a toxic chemical release form to the executive director if the facility:

(1) has 10 or more full-time employees and a standard industrial classification code between 20 and 39 that was in effect on July 1, 1985, or has been designated as a facility subject to these requirements by the administrator; and

(2) manufactured, processed, or otherwise used a toxic chemical in excess of the threshold amount during the calendar year for which a toxic chemical release form is required.

(b) The owner or operator of a facility subject to Subsection (a) shall submit a toxic chemical release form for each toxic chemical manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold amount.

(c) The form shall be submitted not later than July 1 of each year and must contain data that reflect each release that occurred during the preceding calendar year. The administrator may modify the frequency with which a report must be submitted under this section as provided under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.004. THRESHOLD AMOUNTS FOR REPORTING. (a) The threshold amounts for purposes of reporting a toxic chemical under Section 370.003 are as follows:

(1) for a toxic chemical used, but not manufactured or processed, at a facility, 10,000 pounds of the toxic chemical used at the facility during the preceding calendar year; or

(2) for a toxic chemical manufactured or processed at a facility, 25,000 pounds of the toxic chemical manufactured or processed at the facility during the preceding calendar year.

(b) The administrator may establish a threshold amount for a toxic chemical different from the amount established under Subsection

(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.005. USE OF AVAILABLE DATA. (a) To provide the information required on the toxic chemical release form, the owner or operator of a facility may use:

(1) readily available data, including monitoring data, collected under other law; or

(2) reasonable estimates of the amounts involved if data under Subdivision (1) are not readily available.

(b) This section does not require monitoring or measurement of the quantities, concentration, or frequency of a toxic chemical released into the environment beyond the monitoring and measurement required under other law or regulation.

(c) To ensure consistency, data must be expressed in common units, as designated by the administrator.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.006. PUBLIC AVAILABILITY OF TOXIC CHEMICAL RELEASE FORM. (a) A toxic chemical release form required under this chapter is intended to provide information to the public, including federal, state, and local governments and citizens of the communities surrounding a facility covered under Section 370.003.

(b) A toxic chemical release form shall be made available in a manner consistent with the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.) and Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUNDS. (a) Toxic chemical release reporting funds consist of money collected by the commission from:

(1) fees imposed on owners and operators of facilities

required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected under this chapter to pay for:

(1) costs incurred by the commission in implementing this chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993.

Sec. 370.008. DISPOSITION OF FEES. (a) The owner or operator of a facility required to submit a toxic chemical release form under this chapter shall pay, at the time of the submission, a fee of \$25 for each toxic chemical release form submitted.

(b) The maximum fee for a facility may not exceed \$250.

(c) The commission by rule may increase or decrease the toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in the state treasury to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 63, eff. Sept. 1, 1997.

**CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 371.001. SHORT TITLE. This chapter may be cited as the Texas Used Oil Collection, Management, and Recycling Act.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.002. FINDINGS. The legislature finds that:

(1) when properly managed and recycled, used oil is a valuable energy resource;

(2) used oil can be recycled into a number of different products;

(3) improper disposal of used oil is a significant environmental problem and a waste of a potentially valuable energy resource;

(4) there is a need for an expanded statewide network of used oil collection sites for private citizens who change their own motor oil;

(5) the private sector, with incentives, is best equipped to establish and operate used oil collection centers that are convenient for the public;

(6) the need for publicly operated used oil collection centers is greatest in more sparsely populated areas of the state and should diminish over time;

(7) the United States Environmental Protection Agency has issued final regulations that properly classify and regulate used oil and used oil filters in accordance with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(8) the current used oil and used oil filter program in this state imposes more stringent management requirements than the regulations of the United States Environmental Protection Agency;

(9) limited public money is needed to finance public and private infrastructure investments to collect, manage, and recycle used motor oil;

(10) the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) establish a balanced approach to the objectives of preserving a valuable resource and protecting the natural environment; and

(11) recycling, reuse, treatment, or proper disposal of used oil produces a more advantageous cost-benefit ratio in accomplishing the goals of state law, and these considerations should be included in the source reduction and waste minimization plans adopted under Section 361.505 to the extent applicable.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.0025. PURPOSE AND SCOPE. (a) The purposes of this chapter are to:

(1) ensure that this state's used oil program is consistent with and not more stringent than the federal program for the management of used oil under 40 C.F.R. Part 279 unless otherwise required by state or federal law; and

(2) establish a program to promote public and private do-it-yourselfer used oil collection centers and used oil collection centers.

(b) This chapter does not apply to used oil:

(1) generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code;

(2) exempted under 40 C.F.R. Section 279.10(g) because the oil has been introduced into a crude oil pipeline or is being processed at a petroleum refining facility; or

(3) generated through other activities exempted under 40 C.F.R. Part 271 or 279.

(c) This chapter does not apply to a used oil filter generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 1995, 74th Leg., ch. 887, Sec. 2, eff. Sept. 1, 1995.

Sec. 371.003. DEFINITIONS. In this chapter:

(1) "Aboveground tank" means a tank used to store or process oil that is not an underground storage tank as defined by 40 C.F.R. Section 280.12.

(2) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(5) "Do-it-yourselfer used oil collection center" means a site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the used oil it generates.

(6) "Existing tank" means a tank that is used for the storage or processing of used oil and that as of September 1, 1995, is in operation or is being installed. A tank is being installed if the owner or operator has obtained all necessary federal, state, and local approvals or permits and:

(A) a continuous on-site installation program has begun; or

(B) the owner or operator has entered into contractual obligations for installation of the tank that cannot be cancelled or modified without substantial loss.

(7) "Household do-it-yourselfer used oil" means oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(8) "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

(9) "New tank" means a tank for the storage or processing of used oil the installation of which begins on or after September 1, 1995.

(10) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes.

(11) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived products, including blending used oil with virgin petroleum products, blending used oils to meet fuel specifications, filtration, simple distillation, chemical or physical separation, and rerefining.

(12) "Reclaiming" means processing material to recover a usable product or regenerating material, including recovering lead from a spent battery and regenerating spent solvents.

(13) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) burning used oil for energy recovery.

(14) "Rerefining" means applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

(15) "Rerefining distillation bottoms" means the heavy fraction of filtered and dehydrated used oil produced by vacuum distillation. The composition of still bottoms varies with column operation and feedstock.

(16) "Tank" means a stationary device designed to contain an accumulation of used oil that is constructed primarily of nonearthen materials that provide structural support, including wood, concrete, steel, and plastic.

(17) "Used oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(18) "Used oil aggregation point" means a site or facility that accepts, aggregates, or stores used oil collected from:

(A) used oil generation sites owned or operated by the owner or operator of the used oil aggregation point and transported to the used oil aggregation point in shipments of not more than 55 gallons; or

(B) household do-it-yourselfers.

(19) "Used oil burner" means a facility in which used oil not meeting the specifications in 40 C.F.R. Section 279.11 is burned for energy recovery in a device listed in 40 C.F.R. Section 279.61(a).

(20) "Used oil collection center" means a site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 C.F.R. Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 C.F.R. Section 279.24; or

(B) household do-it-yourselfers.

(21) "Used oil fuel marketer" means a person who:

(A) directs a shipment of used oil not meeting the specifications in 40 C.F.R. Section 279.11 from the person's facility to a used oil burner; or

(B) first claims that used oil to be burned for energy recovery meets the used oil specifications in 40 C.F.R. Section 279.11.

(22) "Used oil generator" means a person, by site, whose act or process:

(A) produces used oil; or

(B) first causes used oil to become subject to regulation.

(23) "Used oil processor or rerefiner" means a facility that processes used oil.

(24) "Used oil transfer facility" means a transportation-related facility, including a loading dock, parking area, storage area, or other area, where shipments of used oil are held for more than 24 hours and not more than 35 days during the normal course of transportation. A transfer facility that stores used oil for more than 35 days is subject to 40 C.F.R. Part 279, Subpart F.

(25) "Used oil transporter" means a person who:

(A) transports used oil; or

(B) owns or operates a used oil transfer facility.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.045, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 4.05, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.122, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 3, eff. Sept. 1, 1995.

#### **SUBCHAPTER B. USED OIL RECYCLING PROGRAM**

Sec. 371.021. PUBLIC EDUCATION. The commission shall conduct an education program to inform the public of the need for and benefits of the collection and recycling of used oil and used oil filters. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of



used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.022. NOTICE BY RETAIL DEALER. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) containing instructions for disposal of used oil filters; and

(3) prominently displaying the toll-free telephone number of the state used oil information center established under Section 371.021.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.023. GRANTS TO LOCAL GOVERNMENTS AND PRIVATE ENTITIES.

(a) The commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

(b) The commission may approve a grant for any project that uses one or more of the following programs:

(1) curbside pickup of containers of household do-it-yourselfer used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of household do-it-yourselfer used oil;

(3) establishment of do-it-yourselfer used oil collection centers and used oil collection centers at locations accessible to the public, including landfills, fire stations, retail stores, quick lubrication centers, and automobile repair shops;

(4) provision of containers and other materials and supplies that can be used to store household do-it-yourselfer used oil for pickup or delivery to a do-it-yourselfer used oil collection center in an environmentally sound manner; and

(5) any other activity the advisory committee established under Subsection (c) determines will encourage the proper recycling of household do-it-yourselfer used oil.

(c) The commission shall appoint an advisory committee for the used oil grant program. The advisory committee consists of seven members who serve at the pleasure of the commission and represent oil manufacturers as defined by Section 371.062, operators of used oil collection centers, and local governments. The advisory committee members serve without compensation and are not entitled to reimbursement for expenses incurred in the performance of their duties. The advisory committee shall:

(1) recommend criteria for grants;

(2) establish guidelines for allowable administrative expenses; and

(3) recommend grant recipients to the commission based on the used oil collection needs of this state.

(d) The commission by rule shall:

(1) establish procedures for the application for and criteria for the award of grants under this section; and

(2) adopt guidelines for allowable administrative expenses in accordance with guidelines established by the advisory committee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.024. COLLECTION FACILITIES. (a) All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers.

(b) A do-it-yourselfer used oil collection center and a used

oil collection center shall:

- (1) register biennially with the commission; and
  - (2) report annually to the commission the amounts of used oil collected by the center from the public.
- (c) The commission shall adopt rules governing the registration of and reporting by do-it-yourselfer used oil collection centers and used oil collection centers.
- (d) The commission by rule shall adopt standards for managing and operating a do-it-yourselfer used oil collection center or a used oil collection center.
- (e) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering do-it-yourselfer used oil collection centers and used oil collection centers. A private entity that serves voluntarily as a do-it-yourselfer used oil collection center or a used oil collection center is exempt from the registration fee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.124, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.0245. REIMBURSEMENT OF USED OIL COLLECTION CENTER'S HAZARDOUS WASTE EXPENSE. (a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

- (1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;
- (2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in Subdivision (1) and is unsuitable for recycling; or
- (3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

- (1) the center has established procedures to minimize the

risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of used oil from any person at any one time if the center is a registered do-it-yourselfer used oil collection center; or

(B) 55 gallons of used oil from any person at one time if the center is a registered used oil collection center; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used oil collection center may not be reimbursed for more than \$7,500 in total eligible disposal costs, subject to Section 371.0246(d).

(e) Reimbursements made under this section shall be paid out of the used oil recycling account and may not exceed an aggregate amount of \$500,000 each fiscal year.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 65, eff. Sept. 1, 1997.

Sec. 371.0246. PROCEDURES FOR REIMBURSEMENT. (a) An owner or operator of a registered do-it-yourselfer used oil collection center

or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered do-it-yourselfer used oil collection center or used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and Section 371.0245 are subject to funds available for disbursement in the used oil recycling account and to Section 371.0245(e). This subchapter does not create an entitlement to money in the used oil recycling account or any other fund.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 66, eff. Sept. 1, 1997.

Sec. 371.025. LIMITATION OF LIABILITY. (a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.125, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.026. REGISTRATION AND REPORTING REQUIREMENTS OF USED OIL HANDLERS OTHER THAN GENERATORS. (a) The commission shall adopt rules governing registration and reporting of used oil handlers other than generators. The rules shall require that:

(1) a used oil handler other than a generator:

(A) register with the commission;

(B) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil handling; and

(C) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil, except that this provision does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated; and

(2) a used oil processor or rerefiner must report to the commission, in the form of a letter on a biennial basis by December 1 of each odd-numbered year, the calendar year covered by the report and the quantities of used oil accepted for processing or rerefining and the manner in which the used oil is processed or rerefined, including the specific processes employed.

(b) The commission by rule shall adopt reasonable management and safety standards for the handling of used oil.

(c) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering used oil handlers other than generators.

(d) A used oil transporter may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil, except that a used oil transporter may conduct incidental processing operations, including settling and water separation, that occur in the normal course of the transportation of used oil but that are not designed to produce, or make more amenable for the production of, used-oil-derived products or used oil fuel.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.126, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 389, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.027. GIFTS AND GRANTS. The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.028. RULES. Not later than January 1, 1996, the commission shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by this chapter. Unless otherwise required by federal or state law, the rules, standards, and procedures must be consistent with and not more stringent than the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES**

Sec. 371.041. ACTIONS PROHIBITED. A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. April 1, 1992. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.128, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 40, eff. Sept. 1, 1997.

#### **SUBCHAPTER D. USED OIL RECYCLING ACCOUNT; FEES**

Sec. 371.061. USED OIL RECYCLING ACCOUNT. (a) The used oil recycling account is in the state treasury.

(b) The account consists of:

(1) fees collected under Sections 371.024, 371.026, and



371.062;

(2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and

(3) gifts, grants, donations, or other financial assistance the commission is authorized to receive under Section 371.027.

(c) The commission may use money in the account only for purposes authorized by this chapter, including:

(1) public education;

(2) grants to public and private do-it-yourselfer used oil collection centers and used oil collection centers;

(3) registration of do-it-yourselfer used oil collection centers, used oil collection centers, and used oil handlers other than generators; and

(4) administrative costs of implementing this chapter.

(d) The account is exempt from the application of Section 403.095, Government Code.

(e) For the purpose of consolidating appropriations, the commission may transfer any amount authorized under Subsection (c)(4) or by legislative appropriation to the waste management account subject to the limitations and requirements of this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.06, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.131, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 68, eff. Sept. 1, 1997.

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "Distributor" means a person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil.

(2) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer or distributor. The term does not include the sale of automotive oil:

(A) exported from this state to a location outside this state for the purpose of sale or use outside this state;

(B) for resale to or use by vessels exclusively engaged in foreign or interstate commerce;

(C) to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the commission at the location where the automotive oil is changed, used, consumed, or resold to do-it-yourselfers; or

(D) to the United States.

(3) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(4) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. The term includes any person packaging or repackaging automotive oil.

(b) An oil manufacturer or distributor who makes a first sale of automotive oil is liable for a fee.

(c) An oil importer who imports or causes to be imported automotive oil is liable for the fee at the time the oil is received.

(d) An oil distributor or retailer who exports from this state to a location outside this state oil on which the automotive oil fee has been paid may request from his supplier a refund or credit of the fee paid on the exported oil. The supplier or oil manufacturer and the importer may in turn request a refund of the fee paid to the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(e) An oil manufacturer, importer, distributor, or retailer who makes a sale to a vessel or a sale for resale to a vessel of automotive oil on which the automotive oil fee has been paid may file with the comptroller a request for refund of the fee paid on the oil or, where applicable, may request a refund or credit from the supplier to whom the fee was paid. The supplier may in turn request a refund from the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(f) Each oil manufacturer, distributor, or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale or, in the case of an importer, the first receipt in Texas of automotive oil by the person

and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale or receipt for four years from the date of sale or receipt; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(g) Records required to be maintained under Subsection (f) shall be available for inspection by the comptroller at all reasonable times.

(h) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(i) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(j) The fee imposed under this section is one cent per quart or four cents per gallon of automotive oil.

(k) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(l) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling account.

(m) A distributor must obtain a permit from the comptroller. The comptroller shall adopt an application form for the permit, which must include:

(1) the name under which the applicant transacts or intends to transact business;

(2) the location of the applicant's distribution center or warehouse in this state;

(3) if the applicant is a corporation or partnership, the names of the principal officers of the corporation or of the members

of the partnership and the address of each officer or member; and

(4) any other information required by the comptroller.

(n) The comptroller may deny or revoke a permit under Subsection (m) if false information is submitted on the application or on a required fuels tax report or supplement.

(o) A permit under Subsection (m) may not be assigned.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.09, eff. Oct. 1,

1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.132, eff. Sept. 1, 1995;

Acts 1995, 74th Leg., ch. 887, Sec. 9; Acts 1997, 75th Leg., ch.

333, Sec. 69, eff. Sept. 1, 1997.

#### **SUBCHAPTER E. FILTER STORAGE, TRANSPORTATION, OR PROCESSING**

Sec. 371.101. DEFINITIONS. In this subchapter:

(1) "Bill of lading" means a shipping document that confirms the receipt of a shipment.

(2) "Bulk filter container" means a portable device that:

(A) is part of an integrated delivery and retrieval system; and

(B) has a capacity greater than 330 gallons.

(3) "Component parts" means the severable parts of an oil filter and includes oil present in an oil filter.

(4) "Do-it-yourselfer" means an individual who removes a used oil filter in the process of an oil change or automotive repair from the engine of a light duty motor vehicle, small utility engine, noncommercial motor vehicle, or farm equipment owned or operated by the individual.

(5) "Generator" means a person whose activities produce used oil filters. The term does not include a do-it-yourselfer.

(6) "Process" means to prepare a used oil filter for recycling, steel recovery, energy recovery, or proper disposal.

(7) "Processor" means a person that processes used oil filters generated by another person. The term does not include a generator that consolidates, drains, or crushes used oil filters for off-site recycling or disposal.

(8) "Store" means to hold in a location for any period.

(9) "Storage facility" means a location that stores used oil filters before transportation, processing, recycling, or disposal

of the filters. The term does not include the location of a generator.

(10) "Transporter" means a person that transports used oil filters to a location for storage, processing, recycling, or disposal.

(11) "Used oil filter" means any device that is an integral part of an oil flow system, the primary purpose of which is to remove contaminants from flowing oil contained in the system, and that, as a result of use, has become contaminated and unsuitable for its original purpose, is removed from service, and contains entrapped used oil. The term does not include a filter attached to the equipment containing the oil flow system. This term continues to apply regardless of prior processing until but not after the filter has been burned for steel recovery or energy recovery or it is separated into its component parts.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.102. APPLICABILITY. (a) This subchapter applies to a used oil filter only if the filter has not been:

- (1) separated into its component parts; or
- (2) burned for:
  - (A) steel recovery; or
  - (B) energy recovery.

(b) This subchapter does not apply to:

- (1) an industrial generator that is:
  - (A) registered with the commission as an industrial or hazardous waste facility; or
  - (B) under the waste management authority of a state agency other than the commission; or
- (2) a do-it-yourselfer.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.103. GENERAL REQUIREMENTS. (a) A person may not store, process, or dispose of a used oil filter in a manner that results in the discharge of oil into soil or water.

(b) A person may not knowingly place on land a used oil filter that contains oil unless the used oil filter is in a container.

(c) A bulk filter container used to store used oil filters:

- (1) must not leak; and
- (2) must be securely closed, waterproof, and in good

condition.

(d) A used oil filter may not be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.104. REGISTRATION AND REPORTING. (a) A transporter, storage facility, or processor may not store, process, recycle, or dispose of used oil filters unless the person is registered with the commission.

(b) Unless the person is registered with the commission as a storage facility, a person may not store used oil filters:

- (1) that in the aggregate have a volume greater than six 55-gallon drums; or
- (2) in more than one bulk filter container.

(c) A registered transporter, storage facility, or processor shall:

- (1) renew the registration biennially; and
- (2) report to the commission biennially the number of used oil filters the person transported, stored, or processed in the two years preceding the date of the report.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.105. SHIPMENT RECORDS. (a) Each shipment of used oil filters must be accompanied by a bill of lading that conforms to commission rules.

(b) In accordance with commission rules, a copy of the bill of lading for each shipment of used oil filters must be maintained by the generator of the filters, transporter of the filters, storage facility at which the filters were stored, and processor of the filters for at least three years after the date the filters were transported, stored, or processed.

(c) The copies of the bills of lading must be made available for the commission to inspect at any reasonable time.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.106. LIMITATIONS ON STORAGE. (a) A storage facility may not store a used oil filter for more than 120 days.

(b) A transporter may not store a used oil filter for more than 10 days.

(c) A processor may not store a used oil filter for more than 30 days before it is processed.

(d) A processor that stores used oil filters in a container shall label each container clearly with the phrase "Used Oil Filters."

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.107. VARIANCES. (a) The commission may grant an individual variance to allow:

(1) a generator to store used oil filters in a greater aggregate volume than the volume prescribed by Section 371.104(b);  
or

(2) a person to store used oil filters for a period longer than the period prescribed for that person by Section 371.106.

(b) The commission may not grant a variance under this section for a period of longer than two years.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.108. SPILL PREVENTION AND CONTROL. Each registered storage facility and each facility of a registered processor shall develop a plan to prevent spills and respond to spills in accordance with the federal spill prevention, control, and countermeasure requirements provided by Title 40, Code of Federal Regulations, Part 112, as amended.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.109. FINANCIAL RESPONSIBILITY. The commission shall adopt rules requiring a person required to register under Section

371.104 to demonstrate adequate financial responsibility.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.110. CIVIL AND ADMINISTRATIVE PENALTIES. (a) Notwithstanding Sections 7.052 and 7.102, Water Code, a person that violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation and for each day of a continuing violation.

(b) The commission or the attorney general at the request of the commission may bring a suit under Subchapter D, Chapter 7, Water Code, to recover the penalty.

(c) A local government with jurisdiction over the area in which the violation occurred may bring suit to recover the penalty.

(d) The violation described by Subsection (a) also is subject to an administrative penalty. The commission may recover the administrative penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

## **CHAPTER 372. ENVIRONMENTAL PERFORMANCE STANDARDS FOR PLUMBING FIXTURES**

Sec. 372.001. DEFINITIONS. In this chapter:

(1) "Commercial prerinse spray valve" means a handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the commission.

(4) "Plumbing fixture" means a device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower, urinal, toilet, or drinking water fountain.



(5) "Plumbing fixture fitting" means a device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, or bath filler.

(6) "Pressurized flushing device" means a device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet.

(8) "Water closet" means a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.001 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.048, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.133, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 1, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 1, eff. September 1, 2009.

Sec. 372.002. WATER SAVING PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture for use in this state unless:

(1) the plumbing fixture meets the water saving performance standards provided by Subsection (b); and

(2) the plumbing fixture is listed by the commission under Subsection (c).

(b) The water saving performance standards for a plumbing fixture are the following standards:

(1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a

pressure of 60 pounds per square inch;

(2) for a shower head, maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch;

(3) for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of one gallon of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals";

(4) except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; or

(ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals";

(5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of 1.6 gallons of water per flush; and

(B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device";

(6) except as provided by Subsection (h), for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) the toilet must be a dual flush water closet that meets the following standards:

(i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(b) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device"; or

(B) the toilet must be a single flush water closet that meets the following standards:

(i) the average flush volume may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(7) a drinking water fountain must be self-closing.

(c) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by Subsection (b). To have a plumbing fixture included on the list, a manufacturer must supply to the commission, in the form prescribed by the commission:

(1) the identification and the performance specifications of the plumbing fixture; and

(2) certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing

fixture meets the water saving performance standards established by Subsection (b).

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(f) This section does not apply to:

(1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;

(2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards provided by this section;

(3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;

(4) a fixture imported only for use at the importer's domicile;

(5) a nonwater-supplied urinal; or

(6) a plumbing fixture that has been certified by the United States Environmental Protection Agency under the WaterSense Program.

(g) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty commercial applications.

(h) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5) if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system through the floor;

(2) is located in a correctional facility, as defined by Section 1.07, Penal Code;

(3) is used in a bariatric application;

(4) is used by children at a day-care facility; or

(5) consists of a non-tank type commercial bowl connected

to the plumbing system through a pressurized flushing device.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Jan. 1, 1992.  
Renumbered from Sec. 421.002 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.134, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 71, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 6, eff. September 1, 2009.

Sec. 372.0025. EXCEPTION: ACTION BY MUNICIPALITY OR COUNTY. The governing body of a municipality or county by ordinance or order may allow the sale in the municipality or county of a urinal or toilet that does not comply with Section 372.002(b)(4) or (6), respectively, if the governing body finds that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage systems of buildings located in the municipality or county or the public sewer system.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

Sec. 372.003. LABELING REQUIREMENTS. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(c) The commission by rule shall prohibit the sale, offering for sale, distribution, or importation into this state of a new commercial or residential clothes-washing machine, dish-washing machine, or lawn sprinkler unless:

(1) the manufacturer has furnished to the commission, in the form prescribed by the commission, the identification and performance specifications of the device; and

(2) the clothes-washing or dish-washing machine or lawn

sprinkler is labeled in accordance with rules adopted by the commission with a statement that describes the device's water use characteristics.

(d) Rules adopted or amended under this section shall be developed by the commission in conjunction with a technical advisory panel of designated representatives of the Texas Water Development Board and the Texas State Board of Plumbing Examiners.

(e) This section shall not apply to those clothes-washing or dish-washing machines that are subject to and in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.003 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.049, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.135, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. [2667](#)), Sec. 6, eff. September 1, 2009.

Sec. 372.0035. LEAD IN PLUMBING FIXTURES, PIPE, AND PIPE FITTING. (a) A person may not sell or offer for sale a plumbing fixture, pipe, or pipe fitting that contains more than eight percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(b) A person may not sell or offer for sale solder or flux that contains more than two-tenths percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(c) For purposes of this section, a person engaged in the business of installing or repairing plumbing is considered to have sold or offered for sale a plumbing fixture, pipe, pipe fitting, solder, or flux if the person uses or offers to use the fixture, pipe, fitting, solder, or flux to install or repair plumbing.

(d) This section does not prohibit the sale or offer for sale of a lead joint necessary for the repair of cast-iron pipe. The commission shall adopt rules to implement this subsection.

(e) The commission may adopt rules to implement this section.

(f) If a person licensed under Chapter 1301, Occupations Code, violates this section, the Texas State Board of Plumbing Examiners may discipline the person under Subchapter I of that chapter as if a violation of this section were a violation of that chapter.

(g) A person commits an offense if the person violates Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor. Each violation is a separate offense and each day of a continuing violation is a separate offense.

(h) A field representative of the Texas State Board of Plumbing Examiners or, within the jurisdiction of a municipality, a municipal plumbing inspector may issue a citation to a person who violates this section.

Added by Acts 1993, 73rd Leg., ch. 751, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.136, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.787, eff. Sept. 1, 2003.

Sec. 372.004. REPORT TO LEGISLATURE. (a) In this section, "water consumption factor" has the meaning assigned by 10 C.F.R. Part 430, Subpart B, Appendix J, as that appendix existed on September 1, 2001.

(b) This section does not apply to a clothes-washing machine with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

(c) The commission shall report to the legislature not later than February 28 of each year on:

(1) the number of clothes-washing machines with a water consumption factor of more than 11 that were imported into this state during the preceding calendar year;

(2) the number of clothes-washing machines with a water consumption factor of more than 9.5 but not more than 11 that were imported into this state during the preceding calendar year;

(3) the number of clothes-washing machines with a water consumption factor of 9.5 or less that were imported into this state

during the preceding calendar year; and

(4) the average water consumption factor of all clothes-washing machines that were imported into this state during the preceding calendar year.

(d) The commission by rule shall require appropriate industry trade associations or other entities to provide the information described by Subsection (c) to the commission not later than January 31 of each year.

Added by Acts 2001, 77th Leg., ch. 1322, Sec. 1, eff. Sept. 1, 2001.

Sec. 372.005. COMMERCIAL PRERINSE SPRAY VALVE PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, lease, or import into this state a commercial prerinse spray valve for use in this state unless the prerinse spray valve:

(1) has a flow rate of 1.6 gallons of water per minute or less, as determined using the standard test method for prerinse spray valves developed by the American Society for Testing and Materials as specified in ASTM F2324-03 as that method existed on January 1, 2006; and

(2) is listed by the commission under Subsection (b).

(b) The commission shall make and maintain a current list of commercial prerinse spray valves that are certified to the commission by the manufacturer or importer to meet the performance standards provided by Subsection (a)(1). To have a commercial prerinse spray valve included on the list, the manufacturer or importer must supply to the commission, in the form prescribed by the commission, the identification and the performance specifications of the prerinse spray valve. The commission may test a listed commercial prerinse spray valve to determine the accuracy of the manufacturer's or importer's certification and shall remove from the list a prerinse spray valve the commission determines to be inaccurately certified.

(c) The commission may assess against a manufacturer or an importer a reasonable fee for an inspection of a commercial prerinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter. A fee received by the commission under this subsection shall be deposited in the state treasury to the credit of the water resource



management account. Fees deposited under this section may be appropriated only for the administration of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 2, eff. January 1, 2006.

Sec. 372.006. NONWATER-SUPPLIED URINAL PERFORMANCE STANDARDS.

(a) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal for use in this state unless the nonwater-supplied urinal:

(1) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(A) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals"; or

(B) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures";

(2) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(3) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.

(b) The manufacturer or importer must submit to the commission certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied urinal conforms to the requirements described by Subsection (a)(1).

(c) A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water-supplied urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

(d) A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

### CHAPTER 373. WATER CONSERVATION

Sec. 373.001. XERISCAPE ASSISTANCE PROGRAM. (a) The board on request shall assist counties and municipalities by providing a model xeriscape code and other technical assistance.

(b) The board shall work with counties and municipalities to promote, through educational programs and publications, the use of xeriscape practices, including the use of compost, in existing residential and commercial development.

(c) In this section:

(1) "Board" means the Texas Water Development Board.

(2) "Xeriscape" has the meaning assigned by Section 2166.404, Government Code.

Added by Acts 1993, 73rd Leg., ch. 642, Sec. 4, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(17), eff. Sept. 1, 1997.

**For expiration of this chapter, see Section 374.253.**

#### **CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 374.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

(2) "Chlorinated dry cleaning solvent" means any dry cleaning solvent that contains a compound that has a molecular structure containing the element chlorine, including perchloroethylene, also known as tetrachloroethylene.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Corrective action" means those activities described by Section 374.152 or 374.153.

(5) "Corrective action plan" means a plan approved by the commission to perform corrective action at a dry cleaning facility.

(6) "Dry cleaning drop station" means a retail commercial establishment described in category 812320 of the 2002 North American Industry Classification System as an establishment the primary business of which is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing.

(7) "Dry cleaning facility" means:

(A) a retail commercial establishment, described in category 812320 of the 2002 North American Industry Classification System, that operates, or has operated, in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents;

(B) all contiguous land used in connection with the establishment; and

(C) all structures and other appurtenances and improvements located on the contiguous land and used in connection with the establishment.

(8) "Dry cleaning solvent" includes:

(A) perchloroethylene, also known as tetrachloroethylene, petroleum-based solvents, hydrocarbons, silicone-based solvents, and other nonaqueous solvents used in the cleaning of garments or other fabrics at a dry cleaning facility; and

(B) the chemicals and compounds into which the solvents degrade.

(9) "Dry cleaning unit" means a machine or device that uses dry cleaning solvents to clean garments and other fabrics and any piping, ancillary equipment, and containment system associated with the machine or device.

(10) "Executive director" means the executive director of the commission.

(11) "Fund" means the dry cleaning facility release fund.

(12) "Owner" means a person who owns or leases, or has owned or leased, a dry cleaning facility and who is or has been responsible for the operation of dry cleaning operations at the dry cleaning facility.

(13) "Release" means a spill, emission, discharge, escape, leak, or disposal of dry cleaning solvent from a dry cleaning facility into the soil or water of the state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.002. APPLICABILITY OF OTHER LAW. To the extent that this chapter is inconsistent or in conflict with Chapter 361 or other general law, this chapter prevails.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This chapter does not apply to:

- (1) a governmental entity, including a governmental agency or prison; or
- (2) a political subdivision of this state, including a municipality or a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, that owns or operates a wholesale or retail water supply system, public solid waste system, public storm water and drainage system, or public solid waste disposal system.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.004. ADVISORY COMMITTEE. (a) The executive director shall appoint an advisory committee composed of:

- (1) three representatives of the dry cleaning industry who shall provide professional and practical expertise to the commission;
- (2) one public representative of urban areas; and
- (3) one public representative of rural areas.

(b) The advisory committee shall:

- (1) review and comment on the methodology the commission uses to rank contaminated sites under Section 374.154;
- (2) review and comment on the report the commission prepares each biennium under Section 374.056; and
- (3) assist in the ongoing development of rules to implement, administer, and enforce this chapter.

(c) A member of the committee serves at the will of the executive director.

(d) A member of the advisory committee serves without compensation but is entitled to be reimbursed by the commission for actual and necessary travel expenses related to the performance of committee duties.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 2, eff.  
September 1, 2005.

**SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS**

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The commission, with the assistance of the advisory committee, shall adopt rules necessary to administer and enforce this chapter. Rules adopted under this section must be reasonably necessary:

(1) to preserve, protect, and maintain the water and other natural resources of this state; and  
(2) to provide for prompt and appropriate corrective action of releases from dry cleaning facilities.

(b) The commission shall adopt rules that establish:

(1) performance standards for dry cleaning facilities;  
(2) requirements for the removal of chlorinated dry cleaning solvents and wastes from dry cleaning facilities that are to be closed by the owner to prevent future releases;  
(3) criteria to be used in setting priorities for the expenditure of money from the fund after consideration of:  
(A) the benefit to be derived from corrective action compared to the cost of implementing the corrective action;  
(B) the degree to which human health and the environment are affected by exposure to contamination;  
(C) the present and reasonably foreseeable future uses of affected surface water or groundwater;  
(D) the effect that interim or immediate remedial measures may have on future costs;  
(E) the amount of money available for corrective action in the fund; and  
(F) any additional factors the commission considers relevant; and

(4) criteria under which the commission may determine the level at which corrective action is considered to be complete.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 3, eff.

September 1, 2005.

Sec. 374.052. FACILITY RETROFITTING.

(a) The commission by rule shall require dry cleaning facilities operating on or before January 1, 2004, to implement the performance standards adopted under Section 374.053 not later than January 1, 2006.

(b) The commission by rule shall require businesses operating on or before January 1, 2004, whose annual gross receipts are \$150,000 or less to implement the performance standards adopted under Sections 374.053(c)(3), (4), and (5) not later than January 1, 2015.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING FACILITIES. (a) The commission by rule shall adopt performance standards for a new dry cleaning facility.

(b) Rules adopted under this section must allow for the use of new technologies as they become available.

(c) Rules adopted under this section must require:

(1) proper storage and disposal of wastes generated at the facility that contain any quantity of chlorinated dry cleaning solvent;

(2) compliance with emissions standards for hazardous air pollutants for perchloroethylene dry cleaning facilities adopted by the United States Environmental Protection Agency on September 22, 1993;

(3) dikes or other containment structures to be:

(A) installed around each dry cleaning unit that uses chlorinated dry cleaning solvents and each storage area for chlorinated dry cleaning solvents or waste; and

(B) capable of containing any leak, spill, or release of chlorinated dry cleaning solvent;

(4) secondary containment for all new or replaced dry cleaning units, regardless of the solvent used;

(5) all diked floor surfaces on which any chlorinated dry cleaning solvent may leak, spill, or otherwise be released to be made of epoxy, steel, or another material impervious to chlorinated dry cleaning solvents; and

(6) all chlorinated dry cleaning solvents to be delivered to dry cleaning facilities by means of closed, direct-coupled delivery systems, when those systems have become generally available.

(d) Rules adopted under this section shall ensure that wastewater from a dry cleaning unit using chlorinated dry cleaning solvent or discharge of chlorinated dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 5, eff. September 1, 2005.

Sec. 374.054. COMPLETION CRITERIA. (a) In determining whether a corrective action is complete, the commission shall consider the factors listed under Section 374.051(b)(3) and:

(1) individual site characteristics, including natural remediation processes;

(2) state water quality standards; and

(3) additional factors the commission considers relevant.

(b) A deviation from a state water quality standard may not result in the application of a standard that is more stringent than the applicable standard.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 6, eff. September 1, 2005.

Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a) The

commission shall administer this chapter in accordance with this section.

(b) To the maximum extent possible, the commission shall deal with contamination from dry cleaning facilities by using money in the fund.

(c) The commission shall use money from the fund as sites are discovered in the normal course of the commission's business.

(d) The commission shall consider interim or early corrective action that may result in an overall reduction of risk to human health and the environment and in the reduction of total costs of corrective action at a site.

(e) The commission, in its discretion, may use innovative technology to perform corrective action.

(f) To the maximum extent possible, money in the fund must be used to address contamination resulting from releases.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or before December 1 of each even-numbered year, the executive director shall submit to the governor, lieutenant governor, speaker of the house of representatives, and members of the appropriate standing committees of the senate and the house of representatives a report regarding:

- (1) money deposited to the credit of the fund during the two previous fiscal years and the sources of the receipts;
- (2) disbursements from the fund during the two previous fiscal years and the purposes of the disbursements;
- (3) the extent of corrective action taken under this chapter during the two previous fiscal years; and
- (4) the ranking of sites on the date the report is made.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

#### **SUBCHAPTER C. FINANCIAL PROVISIONS**

Sec. 374.101. DRY CLEANING FACILITY RELEASE FUND. (a) The dry cleaning facility release fund is an account in the general revenue fund.

(b) The fund consists of money from:

- (1) proceeds from the charges and fees imposed by this



chapter;

(2) interest attributable to investment of money in the fund;

(3) money recovered by the state under this chapter, including any money paid:

(A) under an agreement with the commission; or

(B) as penalties; and

(4) money received by the commission in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this chapter.

(c) Money in the fund may be appropriated only to the commission for the purposes of this chapter, including any administrative duty imposed on the commission under this chapter.

(d) The commission may annually spend for administrative and start-up expenses incurred in fulfilling its duties under this chapter an amount of money from the fund not to exceed 15 percent of the amount of money credited to the fund in the same fiscal year as the expenditures.

(e) Subject to the limitations of this chapter, the commission shall use only money from the fund to pay for all expenses incurred by the commission in fulfilling its duties under this chapter.

(f) Section 403.095, Government Code, does not apply to money deposited to the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. [2376](#)), Sec. 7, eff. September 1, 2005.

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING. (a) Each owner of an operating dry cleaning facility or dry cleaning drop station shall register with the commission on a form provided by the commission.

(b) An annual registration fee, the total amount of which may be divided into quarterly payments and billed on dates established by the commission, is assessed as follows:

(1) for a dry cleaning facility that:

(A) has gross annual receipts of more than \$150,000, a fee of \$2,500;

(B) has gross annual receipts of \$150,000 or less, a fee of \$250;

(C) is designated as nonparticipating under Section 374.104, a fee of \$250; or

(D) depends entirely on revenue collected from an associated dry cleaning drop station or drop stations, a fee in accordance with Paragraphs (A) and (B) determined by the combined gross annual receipts of the drop station or drop stations; or

(2) for a dry cleaning drop station that:

(A) has gross annual receipts of more than \$150,000, a fee of \$750;

(B) has gross annual receipts of \$150,000 or less, a fee of \$250; or

(C) is designated as nonparticipating under Section 374.104, a fee of \$125.

(c) Fees paid under this section shall be deposited to the credit of the fund.

(d) The owner of a dry cleaning facility or drop station shall post the owner's registration number, in a manner prescribed by the commission, in the public area of each of the owner's operating dry cleaning facilities or drop stations.

(e) Registration under this section must be renewed annually.

(f) For each registration application, the commission shall request that the comptroller verify whether the owner submitting the registration application is in good standing with the state and whether the owner's selection on the registration application of the gross annual receipts classification for the dry cleaning facility or drop station agrees with information reported to the comptroller for the same tax or reporting year. Not later than the third business day after the comptroller receives the verification request, based in part on information supplied by the commission, the comptroller shall report to the commission the owner's standing and whether the owner's application information agrees with the comptroller's information.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. [2376](#)), Sec. 8, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. [3220](#)), Sec. 1, eff. June 15, 2007.

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) The following persons may participate in the fund benefits by registering as provided by this section:

(1) a person who owns real property on which a dry cleaning facility or drop station is or was located; or

(2) a preceding owner of real property on which a dry cleaning facility or drop station is or was located who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter.

(b) For a person described by Subsection (a) to participate in fund benefits, the person must:

(1) register with the commission on or before December 31, 2007, using a form prescribed by the commission;

(2) include on the registration form information identifying the person as a:

(A) property owner; or

(B) preceding property owner; and

(3) pay the annual registration fee of \$1,500.

(c) A person described by Subsection (a) may participate in the fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). A person registering after that date must also pay:

(1) all past annual registration fees; and

(2) a late fee of \$100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

(d) The annual registration fee may be divided into quarterly payments due over the year on dates established by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.1023. LIEN. (a) In addition to other remedies available under other law, a lien is imposed against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section

374.1022 that is due while the corrective action is ongoing. The amount of the lien is the sum of:

(1) the costs of the action; and

(2) the fees due but not paid during the period of the corrective action.

(b) The lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost and fee recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the corrective action costs and registration fees;

(2) a description of the real property that is subject to or affected by the corrective action; and

(3) the amount of the corrective action costs and registration fees and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of

competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

- (1) describe the real property on which the lien is claimed;
- (2) refer to the lien claimed in a manner sufficient to identify it;
- (3) be in an amount double the amount of the lien referred to;
- (4) be payable to the commission;
- (5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and
- (6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on

what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.103. FEE ON PURCHASE OF DRY CLEANING SOLVENT; DISPOSITION OF PROCEEDS. (a) Except as provided by Subsection (b) and Section 374.104(d), a fee of \$20 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and \$3 per gallon on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility. The person who distributes the solvent shall collect the fees and shall pay to the commission the amount due, in accordance with Subsection (a-1).

(a-1) A person who distributes dry cleaning solvent must register as a distributor with the commission. A registered distributor is entitled to withhold one percent of the amount of the fee imposed by Subsection (a) for the distributor's administrative expenses if the distributor pays the remaining amount to the commission not later than the date prescribed by the commission.

(b) Subsection (a) does not apply to a dry cleaning facility designated as nonparticipating under Section 374.104.

(c) A person who distributes dry cleaning solvent may not sell the solvent for use in a dry cleaning facility unless the person first obtains and records the registration number of the owner of the facility.

(d) The commission shall adopt any procedures needed for the collection, administration, and enforcement of the fee imposed by this section and shall deposit all remitted fees to the credit of the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 3, eff. June 15, 2007.

Sec. 374.104. OPTION NOT TO PARTICIPATE IN FUND BENEFITS. (a) The owner of a dry cleaning facility or drop station may file with the commission an option for the facility or drop station not to participate in fund benefits.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 800 (S.B. 444), Sec. 1

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 1110 (H.B. 2376), Sec. 10

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate after September 1, 2005, unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

(b-1) An owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) is entitled to a refund of registration fees paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

(c) The commission shall designate a dry cleaning facility or drop station as nonparticipating if the owner:

(1) demonstrates, at the owner's expense and in accordance with commission rules, that:

(A) the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility or drop station in this state; and

(B) perchloroethylene has never been used at that location;

(2) agrees that perchloroethylene will not be used as a dry cleaning solvent at the facility or drop station; and

(3) obtains the written consent of the person who owns the real property on which the dry cleaning facility or drop station is located.

(d) A facility designated as nonparticipating is not subject to the fees on dry cleaning solvents, other than perchloroethylene, under Section 374.103.

(e) On payment of the registration fee, the commission shall issue a specially marked registration document to the owner of a nonparticipating facility or drop station. The owner shall post the registration document in the public area of the facility or drop station.

(f) After a dry cleaning facility or drop station is designated as nonparticipating:

(1) the facility or drop station is not eligible for any expenditures of money from the fund or other benefits of participation under this chapter for that facility or drop station; and

(2) that facility or drop station may not later become a participating facility.

(g) A person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section may, as provided by this subsection, retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. A person to whom this section applies must:

(1) provide to the commission the written consent of the property owner at the new location; and

(2) continue to comply with the other requirements of this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 800 (S.B. 444), Sec. 1, eff. June 17,



2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 4, eff. June 15, 2007.

**SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION**

Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not knowingly allow a release.

(b) A person who knows of a release of more than one quart of a chlorinated dry cleaning solvent or of more than one gallon of a non-chlorinated dry cleaning solvent shall:

- (1) immediately contain and control the release; and
- (2) notify the commission of the release before the expiration of 24 hours after the person learns of the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 11, eff. September 1, 2005.

Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE; EMERGENCY ACTION. (a) If a release or a potential release poses a threat to human health or to the environment, the commission shall:

- (1) investigate and assess the extent of the resulting contamination; and
- (2) take necessary or appropriate emergency action to ensure that human health or safety is not threatened by the release or the potential release.

(b) Emergency action under Subsection (a)(2) may include the treatment, restoration, or replacement of drinking water supplies.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.153. CORRECTIVE ACTION. (a) Subject to Subchapter E, the commission shall take corrective action for a release from a dry cleaning facility that results in contamination, including contamination that may have moved off the dry cleaning facility.

(b) Corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost-effective method that:

- (1) is technologically feasible and reliable;
- (2) provides adequate protection of human health and the environment; and
- (3) minimizes, to the extent practical, environmental damage.

(c) The commission shall:

- (1) operate and maintain corrective action;
- (2) monitor releases from a dry cleaning facility, including contamination that may have moved off the dry cleaning facility;
- (3) pay the reasonable costs incurred by the commission in providing field and laboratory services; and
- (4) pay the reasonable costs of restoring property, as nearly as practicable, to the conditions that existed before the activities associated with:
  - (A) the investigation of a release;
  - (B) a cleanup; or
  - (C) related corrective action.

(d) The commission shall ensure the removal and proper disposal of wastes generated by a release.

(e) Except as provided by Subchapter E, the commission shall pay the costs of corrective action conducted under this subchapter by the commission or by other entities approved by the commission, regardless of whether the corrective action is included in a corrective action plan.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION. (a) If the commission has completed corrective action at a dry cleaning site, perchloroethylene may not be used at that site.

(b) If the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site, the site is not eligible for future corrective action using money from the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 5,

eff. June 15, 2007.

Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES. (a) For a contaminated dry cleaning site that does not require emergency action under Section 374.152, the commission shall assign a rank for the site relative to other sites previously ranked and awaiting corrective action based on information contained in the application for ranking.

(b) The following persons are eligible to apply for a site to be ranked under Subsection (a):

(1) a person who is an owner of the dry cleaning facility or drop station; and

(2) a person who is registered with the commission under Section 374.1022.

(c) If the applicant for ranking:

(1) is not an owner of the real property, the application must include proof that an owner of the real property has been notified of the application;

(2) is an owner of the real property and the dry cleaning facility or drop station is leased, the application must include proof that a lessee has been notified of the application; or

(3) is a person described by Section 374.1022(a)(2), the application must include proof that the owner of the real property and any lessee have been notified of the application.

(d) The application for ranking must contain information and evidence required by commission rule to aid in ranking. The information and evidence required may include:

(1) water or soil samples;

(2) analyses of the water or soil samples;

(3) hydrogeologic information from the contaminated site;

(4) information concerning the site's proximity to a private or public water supply; and

(5) other information or evidence the commission considers necessary.

(e) The costs incurred by an applicant in collecting the information and evidence under Subsection (d) shall be credited against the deductible payable by the applicant under Section 374.203(d).

(f) The commission shall notify the applicant of the relative

ranking the commission assigns the applicant's site on or before the 90th day after the date the application is received by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 6, eff. June 15, 2007.

Sec. 374.155. POWER TO MODIFY COMMISSION RANKINGS OR POSTPONE CORRECTIVE ACTIONS. The commission may:

- (1) modify the ranked status of a site as warranted under the system of priorities established under Section 374.051(b)(3); or
- (2) postpone temporarily the completion of a corrective action for which money from the fund is being used, if the postponement is necessary to make money available for corrective action at a site with a higher ranking.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. LIABILITY AND RESPONSIBILITY**

Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission may hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if the commission finds, after notice and an opportunity for a hearing that:

- (1) requiring the owner to bear the responsibility will not prejudice another owner or person who is eligible, under this chapter, to have corrective action costs paid by the fund; and
- (2) the owner:
  - (A) caused a release by operating practices contrary to those generally in use at the time of the release;
  - (B) is in arrears for money owed under this chapter, after notice and an opportunity to correct the arrearage;
  - (C) obstructed the efforts of the commission to carry out its obligations under this chapter other than by the exercise of the owner's legal rights;
  - (D) caused or allowed the release because of a material

violation of the performance standards established by this chapter or the rules adopted by the commission under this chapter; or

(E) has more than once violated Section 374.151 or related commission rules.

(b) To the extent that an owner is responsible for corrective action costs under this subsection, the owner is not entitled to the exemption under Section 374.207.

(c) The commission, or the attorney general at the request of the commission, may bring a civil action to recover any amounts owed to the commission under this section. The commission or attorney general, as applicable, may recover court costs, the costs of preparing for litigation, and reasonable attorney's fees incurred in an action brought under this section. An owner is jointly and severally liable with any other defendant for the entire amount of costs.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. [2376](#)), Sec. 13, eff. September 1, 2005.

Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE ACTION.

(a) In this section, "contaminated dry cleaning site" means the areal extent of soil or groundwater contamination with dry cleaning solvents.

(b) The commission may not use money from the fund for the payment of costs in excess of \$5 million for corrective action at a single contaminated dry cleaning site.

(c) Except for dry cleaning sites that require emergency action under Section 374.152, the commission may not use money from the fund for corrective action at a contaminated dry cleaning site unless an eligible person applies for the ranking under Section 374.154 and is not otherwise ineligible for corrective action under this chapter.

(d) The owner of a dry cleaning facility or drop station, or other person who submits the application for ranking the facility under Section 374.154, shall pay as a nonrefundable deductible the first \$5,000 of corrective action costs incurred because of a release from the dry cleaning facility or drop station. The commission may take corrective action regardless of whether the commission obtains

the deductible.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 14, eff. September 1, 2005.

Sec. 374.204. LIMITATION ON LIABILITY. The fund, the commission, the executive director, this state, or agents or employees of this state may not be held liable for loss of business, damages, or taking of property associated with any corrective action taken under this chapter.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD PARTIES. Money from the fund may not be used to compensate third parties for bodily injury or property damage caused by a release, other than property damage included in a corrective action plan approved by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.206. USE OF OTHER SOURCES OF MONEY. This chapter does not create a liability or responsibility on the part of the commission, the executive director, this state, or agents or employees of this state to pay any corrective action costs from a source other than the fund or to take corrective action if the amount of money in the fund is insufficient.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. If an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law against the owner or other person by or on

behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 7, eff. June 15, 2007.

Sec. 374.208. UNAUTHORIZED PAYMENTS. (a) The commission may pay costs from the fund under this chapter only if the costs are:

- (1) integral to corrective action for a release; or
- (2) required for the administration or enforcement of this chapter.

(b) The commission may not spend money from the fund:

(1) for corrective action at a site contaminated by solvents normally used in dry cleaning operations, if the contamination did not result from the operation of a dry cleaning facility;

(2) for corrective action at a site, other than a dry cleaning facility, that is contaminated by dry cleaning solvents that were released while being transported to or from a dry cleaning facility by a person other than the owner of the dry cleaning facility or the owner's agents or employees; or

(3) for the payment of any costs:

(A) associated with a fine or penalty brought against a dry cleaning facility owner under state or federal law; or

(B) related to corrective action at a dry cleaning facility that:

(i) has been included by the United States Environmental Protection Agency on the national priorities list; or

(ii) is a hazardous waste facility eligible for listing on the state registry under Subchapter F, Chapter 361.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS;  
PENALTIES; EXPIRATION**

Sec. 374.251. REVIEW OF ORDERS. (a) A person affected by an

order of the commission under this chapter may, on or before the 15th day after the date of service of the order, make a written request for a hearing.

(b) A person affected by the final order in an administrative hearing under Subsection (a) is entitled to judicial review and may appeal the order on or before the 31st day after the date on which the order was rendered. If the state prevails in an appeal filed under this subsection, the state is entitled to recover reasonable expenses incurred in obtaining the judgment, including reasonable attorney's fees, costs involved in preparing for the litigation, and witness fees.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 15, eff. September 1, 2005.

Sec. 374.2511. CLOSURE OF UNREGISTERED FACILITY. The commission may issue a notice of violation to the owner or operator of a dry cleaning facility or dry cleaning drop station that is not registered under Section 374.102. The notice must inform the owner or operator of the nature of the violation and state that the commission may order the dry cleaning facility or dry cleaning drop station to cease operation if the violation is not corrected within 30 days after the receipt of the notice. If the owner or operator does not correct the violation within the prescribed time, the commission may order the dry cleaning facility or dry cleaning drop station to cease operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 963 (H.B. 3547), Sec. 1, eff. September 1, 2009.

Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is subject to an administrative penalty under Section 7.0525, Water Code, if the person:

(1) operates a dry cleaning facility or drop station in violation of this chapter, rules adopted under this chapter, or orders of the commission made under this chapter;

(2) prevents or hinders a properly identified authorized



officer, employee, or agent of the commission, or a properly identified person under order of or contract with the commission, from entering, inspecting, sampling, or responding to a release as authorized by this chapter;

(3) knowingly makes any false material statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with this chapter;

(4) knowingly destroys, alters, or conceals any record that this chapter or rules adopted under this chapter require to be maintained; or

(5) violates Section 374.151 or related commission rules.

(b) If a registration fee is not paid on or before the 30th day after the date the fee is due, the commission may assess a penalty not to exceed \$50 per day for each day the fee is not paid.

(c) If a registration application for an operating dry cleaning facility or drop station is not filed with the commission on or before the 30th day after the date the application is due, the commission may assess a penalty not to exceed \$50 per day for each day the application is not filed.

(d) The commission may use normal commission procedures for the collection of penalties and interest on a penalty imposed under this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 16, eff. September 1, 2005.

Sec. 374.253. EXPIRATION. (a) This chapter expires on September 1, 2021.

(b) A corrective action, including any administrative duties associated with the action, for which remediation of a contaminated site has begun before September 1, 2021, shall be completed in accordance with this chapter using money from the fund, to the extent possible, but money may not be collected for or added to the fund on or after that date.

(c) The commission may continue a corrective action that has not progressed beyond the investigative or planning stage after September 1, 2021, to the extent money from the fund is available.

(d) Any unobligated money remaining in the fund after the completion of all corrective actions under Subsection (b) shall be transferred to the general revenue fund to the credit of the commission or a successor agency. The fund is abolished on the date of the transfer.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 17, eff. September 1, 2005.

**For expiration of this chapter, see Section 375.003.**

**CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 375.001. DEFINITIONS. In this chapter:

(1) "Capture rate" means the annual number of convenience switches removed, collected, and recovered, expressed as a percentage of the number of convenience switches estimated to be available for removal in that year from end-of-life vehicles.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Convenience switch" means a capsule, commonly known as a bullet, that:

(A) is part of a convenience light switch assembly; and

(B) because of its mercury content, is the type of switch subject to work practice standards promulgated by the United States Environmental Protection Agency under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(4) "Convenience switch recovery program" means a program for removing, collecting, and recovering convenience switches from end-of-life vehicles in accordance with Subchapter B.

(5) "Eligible vehicle" means a vehicle identified by information provided by the manufacturer to the commission under Section 375.051 as a vehicle that might contain a convenience switch.

(6) "End-of-life vehicle" means a vehicle that:

(A) has not been intentionally flattened, crushed, shredded, or baled; and

(B) is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of

recycling.

(7) "Executive director" means the executive director of the commission.

(8) "Manufacturer" means:

(A) a person who is the last entity in the production or assembly process of a new vehicle; or

(B) the importer or domestic distributor of the vehicle, in the case of an imported vehicle.

(9) "Scrap metal recycling facility" means a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, scrap steel, or nonferrous metallic scrap for sale.

(10) "Vehicle" means any automobile, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(11) "Vehicle recycler" means a person engaged in the business of acquiring, dismantling, or preparing for recycling six or more end-of-life vehicles in a calendar year for the primary purpose of reselling the vehicles' parts. The term includes a salvage vehicle dealer licensed under Chapter 2302, Occupations Code.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to:

(1) a manufacturer of vehicles sold in this state that contain or contained convenience switches; and

(2) a vehicle recycler or scrap metal recycling facility in this state.

(b) The requirements of this chapter do not apply to a manufacturer on or after the 10th anniversary of the date on which the manufacturer last installed a convenience switch in a vehicle sold in this state.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.003. EXPIRATION. This chapter expires August 31,

2015.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

**SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PROGRAM**

Sec. 375.051. MANUFACTURER PROGRAM COMPONENTS. (a) Each manufacturer of vehicles sold in this state, individually or as part of a group, shall, not later than January 1, 2006, implement a program that provides the following:

(1) information identifying that manufacturer's eligible vehicles, including:

(A) a description of the convenience switches used by the manufacturer;

(B) the location on each vehicle of each convenience switch;

(C) the safe and environmentally sound methods for removing a convenience switch from an end-of-life vehicle; and

(D) the estimated number of convenience switches available, for purposes of computing the capture rate;

(2) educational materials to assist a vehicle recycler or scrap metal recycling facility in following a safe and environmentally sound method to remove convenience switches from end-of-life vehicles, including educational materials on hazards presented by the content of a convenience switch and the proper handling of that content;

(3) methods for recycling or disposing of the manufacturer's convenience switches, including the method of packaging and shipping a convenience switch to an authorized recycling, storage, or disposal facility; and

(4) methods for the storage of a convenience switch collected and recovered from an end-of-life vehicle if environmentally appropriate recycling or disposal technologies are not available.

(b) To the extent possible, a convenience switch recovery program must use existing end-of-life vehicle infrastructure. If that infrastructure is not used, the program must include reasons for establishing a separate infrastructure.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff.

August 29, 2005.

Sec. 375.052. PACKAGING, SHIPPING, AND RECYCLING COSTS. Each manufacturer, individually or as part of a group, shall pay the costs of:

(1) packaging and shipping of the manufacturer's convenience switches to recycling, storage, or disposal facilities; and

(2) recycling, storing, or disposing of the manufacturer's removed convenience switches.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.053. COSTS OF EDUCATIONAL MATERIALS. Each manufacturer shall provide financing for:

(1) the preparation of educational materials required under Section 375.051; and

(2) the distribution of those materials at workshops that the commission is required to conduct as part of the commission's technical assistance.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.054. PROVISION OF STORAGE CONTAINERS. Each manufacturer, individually or as part of a group, shall pay for and provide to each vehicle recycler and scrap metal recycling facility containers suitable for the safe storage of convenience switches, including switches encased in light assemblies from which the switches cannot be removed.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

#### **SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PROGRAM IMPLEMENTATION**

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES.

(a) A vehicle recycler or scrap metal recycling facility that removes convenience switches from eligible vehicles in accordance with educational materials received under this chapter shall be provided regulatory incentives by the commission under programs implemented pursuant to Section 5.755, Water Code, including on-site technical assistance and compliance history classification adjustments.

(b) In order to qualify for the regulatory incentives provided by this section, a vehicle recycler or scrap metal recycling facility must submit a report to the commission by November 15 of each year documenting:

(1) the number of convenience switches collected during the prior 12 months; and

(2) the total number of eligible vehicles processed for recycling during the same time period.

(c) Nothing in this chapter shall be construed to require scrap metal recycling facilities or vehicle recyclers to remove convenience switches or maintain records regarding convenience switches they have not removed, and the commission shall not promulgate regulations that create such requirements.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.102. HANDLING OF CONVENIENCE SWITCHES. After removal from a vehicle, a convenience switch shall be collected, stored, transported, and otherwise handled in accordance with:

(1) the applicable convenience switch recovery program; and

(2) the applicable solid waste rules of the commission.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

#### **SUBCHAPTER D. REPORTS**

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall:

(1) publish a report that documents the capture rate achieved through the implementation of this chapter; and

(2) issue recommendations to the governor, the lieutenant

governor, the speaker of the house of representatives, and the chair of each standing committee of the legislature with jurisdiction over environmental issues, which identifies legislative action that may be appropriate to improve the capture rate referenced in Subsection (a)(1) while promoting vehicle recycling and preventing the export of scrap metal from the state.

(b) The executive director may discontinue the requirement for an annual report under this section if the executive director determines that the convenience switches in end-of-life vehicles no longer pose a significant threat to the environment or to public health.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

Sec. 375.152. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT. On or before November 15 of each year, each manufacturer, individually or as part of a group, shall report to the commission the total number of convenience switches recovered in this state and the total amount of mercury, by weight, recovered from those convenience switches during the preceding 12 months.

Added by Acts 2005, 79th Leg., Ch. 746 (H.B. 2793), Sec. 1, eff. August 29, 2005.

**SUBTITLE C. AIR QUALITY**  
**CHAPTER 382. CLEAN AIR ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 382.001. SHORT TITLE. This chapter may be cited as the Texas Clean Air Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 382.002. POLICY AND PURPOSE. (a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the

esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Natural Resource Conservation Commission result in expeditious initiation of enforcement actions as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.139, eff. Sept. 1, 1995.

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(1-a) "Advanced clean energy project" means a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis:

(a) a 99 percent or greater reduction of sulfur dioxide emissions;

(b) if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology



requirements as determined by the commission;

(ii) on an annual basis:

(a) a 95 percent or greater reduction of mercury emissions; or

(b) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;

(iii) an annual average emission rate for nitrogen oxides of:

(a) 0.05 pounds or less per million British thermal units;

(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(C) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(3-a) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(4) "Commission" means the Texas Natural Resource Conservation Commission.

(4-a) "Electric vehicle" means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(5) "Executive director" means the executive director of the commission.

(6) "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(7-a) "Federally qualified clean coal technology" means a technology or process, including a technology or process applied at the precombustion, combustion, or postcombustion stage, for use at a new or existing facility that will achieve on an annual basis a 97 percent or greater reduction of sulfur dioxide emissions, an emission rate for nitrogen oxides of 0.08 pounds or less per million British

thermal units, and significant reductions in mercury emissions associated with the use of coal in the generation of electricity, process steam, or industrial products, including the creation of liquid fuels, hydrogen for fuel cells, and other coproducts. The technology used must comply with applicable federal law regarding mercury emissions and must render carbon dioxide capable of capture, sequestration, or abatement. Federally qualified clean coal technology includes atmospheric or pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, methanation technology, magnetohydrodynamic technology, direct and indirect coal-fired turbines, undiluted high-flame temperature oxygen combustion technology that excludes air, and integrated gasification fuel cells.

(7-b) "Hybrid vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(8) "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to Section 382.057 from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with Section 382.060 as that section existed prior to September 1, 1991.

(9-a) "Motor vehicle" means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(9-b) "Natural gas vehicle" means a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10-a) "Qualifying motor vehicle" means a motor vehicle that meets the requirements of Section 382.210(b).

(11) "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn,

and enhanced gas reburn/sorbent injection.

(11-a) "Solid waste" has the meaning assigned by Section 361.003.

(12) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 135, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 4, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.140, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 1, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(55), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 2, eff. June 14, 2013.

Sec. 382.004. CONSTRUCTION WHILE PERMIT APPLICATION PENDING.

(a) To the extent permissible under federal law and notwithstanding Section 382.0518, a person who submits an application for a permit for a modification of or a lesser change to an existing facility under this subtitle may, at the person's own risk, begin construction

related to the application after the application is submitted and before the commission has issued the permit.

(b) The commission may not consider construction begun under this section in determining whether to grant the permit sought in the application.

Added by Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 1, eff. September 1, 2005.

#### **SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION**

Sec. 382.011. GENERAL POWERS AND DUTIES. (a) The commission shall:

- (1) administer this chapter;
- (2) establish the level of quality to be maintained in the state's air; and
- (3) control the quality of the state's air.

(b) The commission shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods.

(c) The commission has the powers necessary or convenient to carry out its responsibilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.012. STATE AIR CONTROL PLAN. The commission shall prepare and develop a general, comprehensive plan for the proper control of the state's air.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.013. AIR QUALITY CONTROL REGIONS. The commission may designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.014. EMISSION INVENTORY. The commission may require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions of air contaminants in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The commission shall levy a clean fuel incentive surcharge of 20 cents per MMBtu on fuel oil used between April 15 and October 15 of each year in an industrial or utility boiler that is:

(1) capable of using natural gas; and

(2) located in a consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that has not met federal ambient air quality standards for ozone.

(b) The commission may not levy the clean fuel incentive surcharge on:

(1) waste oils, used oils, or hazardous waste-derived fuels burned for purposes of energy recovery or disposal, if the commission or the United States Environmental Protection Agency approves or permits the burning;

(2) fuel oil used during:

(A) any period of full or partial natural gas curtailment;

(B) any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchaser; or

(C) a catastrophic event as defined by Section 382.063;

(3) fuel oil used between April 15 and October 15 in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation; or

(4) any firm engaged in fixed price contracts with public works agencies for contracts entered into before August 28, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 136, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.015. POWER TO ENTER PROPERTY. (a) A member, employee, or agent of the commission may enter public or private property, other than property designed for and used exclusively as a private residence housing not more than three families, at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere.

(b) A member, employee, or agent who enters private property that has management in residence shall:

(1) notify the management, or the person then in charge, of the member's, employee's, or agent's presence; and

(2) show proper credentials.

(c) A member, employee, or agent who enters private property shall observe that establishment's rules concerning safety, internal security, and fire protection.

(d) The commission is entitled to the remedies provided by Sections 382.082-382.085 if a member, employee, or agent is refused the right to enter public or private property as provided by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.144, eff. Sept. 1, 1995.

Sec. 382.016. MONITORING REQUIREMENTS; EXAMINATION OF RECORDS.

(a) The commission may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the commission's jurisdiction under this chapter; and

(2) the owner or operator of the source to make and maintain records on the measuring and monitoring of emissions.

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants. This



subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.145, eff. Sept. 1, 1995.

Sec. 382.0161. AIR POLLUTANT WATCH LIST. (a) The commission shall establish and maintain an air pollutant watch list. The air pollutant watch list must identify:

(1) each air contaminant that the commission determines, on the basis of federal or state ambient air quality standards for the contaminant, should be included on the air pollutant watch list; and

(2) each geographic area of the state for which ambient air quality monitoring data indicates that the individual or cumulative emissions of one or more air contaminants identified by the commission under Subdivision (1) may cause short-term or long-term adverse human health effects or odors in that area.

(b) The commission shall publish notice of and allow public comment on:

(1) an addition of an air contaminant to or removal of an air contaminant from the air pollutant watch list; or

(2) an addition of an area to or removal of an area from the air pollutant watch list.

(c) When considering the addition or removal of an area to or from the air pollutant watch list, the commission shall provide the monitoring data related to the area to the state senator and representative who represent the area.

(d) The commission may hold a public meeting in an area listed on the air pollutant watch list to provide residents of the area with information regarding:

(1) the reasons for the area's inclusion on the air pollutant watch list; and

(2) commission actions to reduce the emissions of air contaminants contributing to the area's inclusion on the air pollutant watch list.

(e) The air pollutant watch list and the addition or removal of a pollutant or area to or from the list are not matters subject to

the requirements of Subchapter B, Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 1, eff. September 1, 2011.

Sec. 382.017. RULES. (a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the commission's action shall be sent by mail written notice of the commission's action.

(d) Subsections (a) and (b) notwithstanding, the commission may adopt rules consistent with Chapter 2001, Government Code, if the commission determines that the need for expeditious adoption of proposed rules requires use of those procedures.

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area

of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the commission by rule may not specify:

(1) a particular method to be used to control or abate air pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 137, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.33, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.145, eff. Sept. 1, 1995.

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES.

(a) In adopting rules, the commission shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, that will reduce emissions.

(b) Any orders or determinations made under this section must be consistent with Section 382.024.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 138, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.146, eff. Sept. 1, 1995.

Sec. 382.0172. INTERNATIONAL BORDER AREAS. (a) In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), the commission, in developing rules and control programs to be included in an implementation plan for an international border area, shall ensure that the plan or revision:

(1) meets all requirements applicable to the plan or revision under Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), other than a requirement that the plan or

revision demonstrates attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision; and

(2) would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision, but for emissions emanating from outside the United States.

(b) For purposes of any emissions control or permit program adopted or administered by the commission and subject to Subsection (c), the commission, to the extent allowed by federal law, may:

(1) authorize the use of emissions reductions achieved outside the United States to satisfy otherwise applicable emissions reduction requirements if the commission finds that the emissions reductions achieved outside the United States are surplus to requirements imposed by applicable law and are appropriately quantifiable and enforceable; and

(2) allow the use of reductions in emissions of one air contaminant to satisfy otherwise applicable requirements for reductions in emissions of another air contaminant if the commission finds that the air contaminant emissions reductions that will be substituted are of equal or greater significance to the overall air quality of the area affected than reductions in emissions of the other air contaminant.

(c) The commission may authorize or allow substitution of emissions reductions under Subsection (b) only if:

(1) reductions in emissions of one air contaminant for which the area has been designated as nonattainment are substituted for reductions in emissions of another air contaminant for which the area has been designated as nonattainment; or

(2) the commission finds that the substitution will clearly result in greater health benefits for the community as a whole than would reductions in emissions at the original facility.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 960, Sec. 1, eff. Sept. 1,

2001.

Amended by:

Acts 2005, 79th Leg., Ch. 820 (S.B. 784), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 1, eff. September 1, 2005.

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA through II and Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Sections 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by 40 C.F.R. Section 60.4142(a)(1)(i) or 40 C.F.R. Section 96.142(a)(1)(i), as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c).

(c) Additional requirements regarding NOx allocations:

(1) The commission shall maintain a special reserve of allocations for nitrogen oxide of 9.5 percent for new units.

Beginning with the 2015 control period, units shall be considered new for each control period in which they do not have five years of operating data reported to the commission prior to the date of allocation for a given control period. Prior to the 2015 control period, units that commenced operation on or after January 1, 2001, will receive NOx allocations from the special reserve only.

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation before January 1, 2001, using the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(C) if the fossil fuel fired unit is not subject to Paragraph (A) or (B) of this subdivision, the unit's control period heat input for such year is multiplied by 30 percent.

(3) Before the allocation date specified by EPA for the control period beginning January 1, 2018, and every five years thereafter, the commission shall adjust the baseline for all affected units using the average of the three highest amounts of the unit's adjusted control period heat input for periods one through five of the preceding nine control periods, with the adjusted control period heat input for each year calculated as follows:

(A) for units commencing operation before January 1, 2001:

(i) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(ii) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(iii) if the fossil fuel fired unit is not subject to Subparagraph (i) or (ii) of this paragraph, the unit's control period heat input for such year is multiplied by 30 percent; and

(B) for units commencing operation on or after January

1, 2001, in accordance with the formulas set forth by USEPA in 40 C.F.R. 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

(d) This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control requirements.

(e) In adopting rules under Subsection (a), the commission shall incorporate any modifications to the federal rules cited in this section that result from:

(1) a request for rehearing regarding those rules that is filed with the United States Environmental Protection Agency;

(2) a petition for review of those rules that is filed with a court; or

(3) a final rulemaking action of the United States Environmental Protection Agency.

(f) The commission shall take all reasonable and appropriate steps to exclude the West Texas Region and El Paso Region, as defined by Section 39.264(g), Utilities Code, from any requirement under, derived from, or associated with 40 C.F.R. Sections 51.123, 51.124, and 51.125, including filing a petition for reconsideration with the United States Environmental Protection Agency requesting that it amend 40 C.F.R. Sections 51.123, 51.124, and 51.125 to exclude such regions. The commission shall promptly amend the rules it adopts under Subsection (a) of this section to incorporate any exclusions for such regions that result from the petition required under this subsection.

(g) The commission shall study the availability of mercury control technology. The commission shall also examine the timeline for implementing the reductions required under the federal rules, the cost of additional controls both to the plant owners and consumers, and the fiscal impact on the state of higher levels of mercury emissions between 2005 and 2018, and consider the impact of trading on local communities. The commission shall report its findings by September 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 56 (S.B. [1672](#)), Sec. 1, eff. May

10, 2007.

Sec. 382.018. OUTDOOR BURNING OF WASTE AND COMBUSTIBLE MATERIAL. (a) Subject to Section 352.082, Local Government Code, and except as provided by Subsections (b) and (d), the commission by rule may control and prohibit the outdoor burning of waste and combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning.

(b) The commission by rule shall authorize outdoor burning of waste if the waste:

(1) consists of trees, brush, grass, leaves, branch trimmings, or other plant growth; and

(2) is burned:

(A) in an area that meets the national ambient air quality standards and that does not contain any part of a city that does not meet national ambient air quality standards; and

(B) on the property on which it was generated and by the owner of the property or any other person authorized by the owner.

(c) Rules adopted under Subsection (b) may not:

(1) require prior commission approval of the burning; or

(2) authorize the burning only when no practical alternative to burning exists.

(d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:

(1) the person burning the waste is doing so at a site:

(A) designated for consolidated burning of waste generated from specific residential properties;

(B) located in a county with a population of less than 50,000;

(C) located outside of a municipality; and

(D) supervised at the time of the burning by an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; and

(2) the waste was generated from a property for which the site is designated.



(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 419 (S.B. 1710), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.001, eff. September 1, 2007.

Sec. 382.019. METHODS USED TO CONTROL AND REDUCE EMISSIONS FROM LAND VEHICLES. (a) Except as provided by Section 382.202(j), or another provision of this chapter, the commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(b) The commission may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.

(c) The commission or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.), except the commission may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(b), eff. Sept. 1, 2003.

Sec. 382.0191. IDLING OF MOTOR VEHICLE. (a) In this section, "idling" means allowing an engine to run while the motor vehicle is not engaged in forward or reverse motion.

(b) The commission may not prohibit or limit the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 390 (S.B. 493), Sec. 1, eff. June 17, 2011.

Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS. (a) The commission shall adopt rules prescribing the most effective emissions control technology reasonably available to control emissions of air contaminants from a commercial infectious waste incinerator.

(b) Rules adopted under this section must require that the prescribed emissions control technology be installed as soon as practicable at each commercial infectious waste incinerator.

(c) In this section, "commercial infectious waste incinerator" means a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 139, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.148, eff. Sept. 1, 1995.

Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS. (a) The commission, when it determines that the control of air pollution is necessary, shall

adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

(b) A person affected by a rule adopted under this section may use:

(1) the process weight method to control and measure the emissions from the plant; or

(2) any other method selected by that person that the commission or the executive director, if authorized by the commission, finds will provide adequate emission control efficiency and measurement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0201. PROHIBITION ON COMMISSION RULE RELATING TO EMISSIONS FROM CERTAIN HOSPITAL OR MEDICAL DISINFECTANTS. (a) In this section, "hospital or medical disinfectant" means an antimicrobial product that is registered with and meets the performance standards of the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136, 136a).

(b) Except as specifically required to comply with federal law or regulation, the commission may not adopt a rule that lessens the efficacy of a hospital or medical disinfectant in killing or inactivating agents of an infectious disease, including a rule restricting volatile organic compound content of or emissions from the disinfectant.

Added by Acts 1999, 76th Leg., ch. 364, Sec. 1, eff. Sept. 1, 1999.

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition;

(2) stratospheric changes, including depletion of ozone;

and

- (3) climatic changes, including global warming.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.03, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.021. SAMPLING METHODS AND PROCEDURES. (a) The commission may prescribe the sampling methods and procedures to be used in determining violations of and compliance with the commission's rules, variances, and orders, including:

- (1) ambient air sampling;
- (2) stack-sampling;
- (3) visual observation; or
- (4) any other sampling method or procedure generally recognized in the field of air pollution control.

(b) The commission may prescribe new sampling methods and procedures if:

- (1) in the commission's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the commission's rules, variances, and orders; and
- (2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS.

(a) In this section:

(1) "Emissions event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity;

(B) the location of the reporting regulated entity;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emissions events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a permanent online centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be easily searchable and accessible to the public. The commission shall evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report and

which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity experienced no emissions events during the prior year. An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually, or at the request of a member of the legislature, shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.126, Water Code.

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 2, eff. September 1, 2011.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

- (1) the frequency of the facility's emissions events;
- (2) the cause of the emissions event;
- (3) the quantity and impact on human health or the environment of the emissions event;
- (4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a



corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knowingly or intentionally falsified the information in the report.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

Sec. 382.022. INVESTIGATIONS. The executive director may make or require the making of investigations:

(1) that the executive director considers advisable in administering this chapter and the commission's rules, orders, and determinations, including investigations of violations and general air pollution problems or conditions; or

(2) as requested or directed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.023. ORDERS. (a) The commission may issue orders and make determinations as necessary to carry out the purposes of this chapter. Orders authorized by this chapter may be issued only by the commission unless expressly provided by this chapter.

(b) If it appears that this chapter or a commission rule, order, or determination is being violated, the commission, or the executive director if authorized by the commission or this chapter, may proceed under Sections 382.082-382.084, or hold a public hearing and issue orders on the alleged violation, or take any other action authorized by this chapter as the facts may warrant.

(c) In addition to the notice required by Chapter 2001, Government Code, the commission or the executive director shall give notice to such other interested persons as the commission or the executive director may designate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.149, eff. Sept. 1, 1995.

Sec. 382.024. FACTORS IN ISSUING ORDERS AND DETERMINATIONS. In issuing an order and making a determination, the commission shall consider the facts and circumstances bearing on the reasonableness of emissions, including:

(1) the character and degree of injury to or interference with the public's health and physical property;

(2) the source's social and economic value;

(3) the question of priority of location in the area involved; and

(4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

## Sec. 382.025. ORDERS RELATING TO CONTROLLING AIR POLLUTION.

(a) If the commission determines that air pollution exists, the commission may order any action indicated by the circumstances to control the condition.

(b) The commission shall grant to the owner or operator of a source time to comply with its orders as provided for by commission rules. Those rules must provide for time for compliance gauged to the general situations that the hearings on proposed rules indicate are necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.026. ORDERS ISSUED UNDER EMERGENCIES. The commission may issue an order under an air emergency under Section 5.514, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.150, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 41, eff. Sept. 1, 1997.

Sec. 382.027. PROHIBITION ON COMMISSION ACTION RELATING TO AIR CONDITIONS EXISTING SOLELY IN COMMERCIAL AND INDUSTRIAL FACILITIES.

(a) The commission may not adopt a rule, determination, or order that:

(1) relates to air conditions existing solely within buildings and structures used for commercial and industrial plants, works, or shops if the source of the offending air contaminants is under the control of the person who owns or operates the plants, works, or shops; or

(2) affects the relations between employers and their employees relating to or arising out of an air condition from a source under the control of the person who owns or operates the plants, works, or shops.

(b) This section does not limit or restrict the authority or powers granted to the commission under Sections 382.018 and 382.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.151, eff. Sept. 1, 1995.

Sec. 382.0275. COMMISSION ACTION RELATING TO RESIDENTIAL WATER HEATERS. (a) In this section, "residential water heater" means a water heater that:

(1) is designed primarily for residential use; and

(2) has a maximum rated capacity of 75,000 British thermal units per hour (Btu/hr) or less.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(d) The commission may not adopt or enforce a rule, determination, or order that relates to emissions of residential water heaters that is below 40 nanograms of NOx per joule unless a lower standard is established by a federal statute or rule. Any commission rule, determination, or order existing on or before the effective date of this subsection related to emission specifications for residential water heaters that is more stringent than the 40 nanograms of NOx per joule standard is hereby repealed.

Added by Acts 2005, 79th Leg., Ch. 59 (H.B. 965), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 1, eff. May 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 2, eff. May 8, 2007.

Sec. 382.028. VARIANCES. (a) This chapter does not prohibit the granting of a variance.

(b) A variance is an exceptional remedy that may be granted only on demonstration that compliance with a provision of this chapter or commission rule or order results in an arbitrary and unreasonable taking of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.152, eff. Sept. 1, 1995.

Sec. 382.029. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.0291. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a commission official or employee during a public hearing conducted by the commission shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the commission is required by law to be conducted at a certain location, the commission shall determine the place within that location at which the hearing will be conducted. In making that determination, the commission shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.

(c) The commission shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice requirements and any other requirements of law or commission rule as though the application were originally submitted to the commission on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the commission at a time when changes take effect concerning notice requirements imposed by law for that type of application, the

applicant must comply with the new notice requirements.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.030. DELEGATION OF HEARING POWERS. (a) The commission may delegate the authority to hold hearings called by the commission under this chapter to:

- (1) one or more commission members;
- (2) the executive director; or
- (3) one or more commission employees.

(b) Except for hearings required to be held before the commission under Section 5.504, Water Code, the commission may authorize the executive director to:

- (1) call and hold a hearing on any subject on which the commission may hold a hearing; and
- (2) delegate the authority to hold any hearing called by the executive director to one or more commission employees.

(c) The commission may establish the qualifications for individuals to whom the commission or the executive director delegates the authority to hold hearings.

(d) An individual holding a hearing under this section may administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 42, eff. Sept. 1, 1997.

Sec. 382.031. NOTICE OF HEARINGS. (a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the

hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the commission not less than 30 days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting. In this subsection, "hearing body" means the individual or individuals that hold a hearing under this section.

(e) This section applies to all hearings held under this chapter except as otherwise specified by Section 382.017.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.154, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 43, eff. Sept. 1, 1997.

Sec. 382.032. APPEAL OF COMMISSION ACTION. (a) A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the commission's or executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision. If the appeal relates to the commission's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal

application for a federal operating permit in accordance with Section 382.0542(b), the petition may be filed at any time before the commission or the executive director takes final action.

(c) Service of citation on the commission must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any commission member.

(d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of an action of the commission or executive director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 5, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.033. CONTRACTS; INSTRUMENTS. The commission may execute contracts and instruments that are necessary or convenient to perform its powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.0335. AIR CONTROL ACCOUNT. (a) The commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter.

(b) Money received by the commission under this section shall be deposited to the credit of the air control account, an account in the general revenue fund. The commission may use money in the account for any necessary expenses incurred in carrying out



commission duties under this chapter.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 72, eff. Sept. 1, 1997.

Sec. 382.034. RESEARCH AND INVESTIGATIONS. The commission shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.035. MEMORANDUM OF UNDERSTANDING. The commission by rule shall adopt any memorandum of understanding between the commission and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.036. COOPERATION AND ASSISTANCE. The commission shall:

- (1) encourage voluntary cooperation by persons or affected groups in restoring and preserving the purity of the state's air;
- (2) encourage and conduct studies, investigations, and research concerning air quality control;
- (3) collect and disseminate information on air quality control;
- (4) advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the federal government, and interested persons or groups concerning matters of common interest in air quality control; and
- (5) represent the state in all matters relating to air quality plans, procedures, or negotiations for interstate compacts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.040. DOCUMENTS; PUBLIC PROPERTY. All information,

documents, and data collected by the commission in performing its duties are state property. Subject to the limitations of Section 382.041, all commission records are public records open to inspection by any person during regular office hours.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 381.020 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 2, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

Sec. 382.041. CONFIDENTIAL INFORMATION. (a) Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

(b) A member, employee, or agent of the commission may disclose information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:

(1) at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and

(2) the commission, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 381.022 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 3, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. PERMITS**

Sec. 382.051. PERMITTING AUTHORITY OF COMMISSION; RULES. (a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility affected by Section 382.0518(g); or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519;

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under Section 382.05184;

(9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;

(10) a pipeline facilities permit under Section 382.05186; or

(11) other permits as necessary.

(c) The commission may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source as a condition of the permit.

(d) The commission shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.06, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 6, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.159, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 5.02, eff. Sept. 1, 2001.

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under Section 382.0518 or 382.0519, a standard permit under Section 382.05195 or 382.05198, or a permit by rule under Section 382.05196 is not required.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 3, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 361, Sec. 1, eff. Sept. 1, 2003.

Sec. 382.05102. PERMITTING AUTHORITY OF COMMISSION; GREENHOUSE GAS EMISSIONS. (a) In this section, "greenhouse gas emissions" means emissions of:

- (1) carbon dioxide;
- (2) methane;
- (3) nitrous oxide;
- (4) hydrofluorocarbons;
- (5) perfluorocarbons; and
- (6) sulfur hexafluoride.

(b) To the extent that greenhouse gas emissions require authorization under federal law, the commission may authorize greenhouse gas emissions in a manner consistent with Section 382.051.

(c) The commission shall:

(1) adopt rules to implement this section, including rules specifying the procedures to transition to review by the commission any applications pending with the United States Environmental Protection Agency for approval under 40 C.F.R. Section 52.2305; and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) If authorization to emit greenhouse gas emissions is no longer required under federal law, the commission shall:

(1) repeal the rules adopted under Subsection (c); and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for

approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 2, eff. June 14, 2013.

Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The commission may consolidate into a single permit any permits, special permits, standard permits, permits by rule, or exemptions for a facility or federal source.

(b) Consistent with the rules adopted under Subsection (d) and the limitations of this chapter, including limitations that apply to the modification of an existing facility, the commission may amend, revise, or modify a permit.

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

- (1) the changes are de minimis under Section 382.05101; or
- (2) the owner or operator:

(A) has obtained a preconstruction permit or permit amendment required by Section 382.0518; or

(B) is operating under:

(i) a standard permit under Section 382.05195 or 382.05198;

(ii) a permit by rule under Section 382.05196; or

(iii) an exemption allowed under Section 382.057.

(d) The commission by rule shall develop criteria and administrative procedures to implement Subsections (b) and (c).

(e) When multiple facilities have been consolidated into a single permit under this section and the consolidated permit is reopened for consideration of an amendment relating to one or more facilities authorized by that permit, the permit is not considered reopened with respect to facilities for which an amendment, revision, or modification is not sought unless this chapter specifically authorizes or requires that additional reopening in order to protect the public's health and physical property.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 7, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.160, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 4, eff. Aug. 30, 1999;

Acts 2003, 78th Leg., ch. 361, Sec. 2, eff. Sept. 1, 2003.

Sec. 382.0512. MODIFICATION OF EXISTING FACILITY. (a) Except as provided in Subsection (b), in determining whether a proposed change at an existing facility is a modification, the commission may not consider the effect on emissions of:

(1) any air pollution control method applied to a source;  
or

(2) any decreases in emissions from other sources.

(b) In determining whether a proposed change at an existing facility that meets the criteria of Section 382.003(9)(E) results in a net increase in allowable emissions, the commission shall consider the effect on emissions of:

(1) any air pollution control method applied to the facility;

(2) any decreases in allowable emissions from other facilities that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur;  
and

(3) any decreases in actual emissions from other facilities that meet the criteria of Section 382.003(9)(E)(i) or (ii).

(c) Nothing in this section shall be construed to limit the application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 2, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(b), eff. Sept. 1, 1999.

Sec. 382.0513. PERMIT CONDITIONS. The commission may establish and enforce permit conditions consistent with this chapter. Permit conditions of general applicability shall be adopted by rule.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 8, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1,

1995.

Sec. 382.0514. SAMPLING, MONITORING, AND CERTIFICATION. The commission may require, at the expense of the permit holder and as a condition of the permit:

- (1) sampling and monitoring of a permitted federal source or facility;
- (2) certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements; and
- (3) a periodic report of:
  - (A) the results of sampling and monitoring; and
  - (B) the certification of compliance.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 9, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0515. APPLICATION FOR PERMIT. A person applying for a permit shall submit to the commission:

- (1) a permit application;
- (2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and
- (3) any other information the commission considers necessary.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION. (a) An applicant, in a manner prescribed by the commission, may request the expedited processing of an application filed under this chapter if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) The executive director may grant an expedited processing request if the executive director determines that granting the request will benefit the economy of this state or an area of this state.

(c) The expediting of an application under this section does not affect a contested case hearing or applicable federal, state, and regulatory requirements, including the notice, opportunity for a public hearing, and submission of public comment required under this chapter.

(d) The commission by rule may add a surcharge to an application fee assessed under this chapter for an expedited application in an amount sufficient to cover the expenses incurred by the expediting, including overtime, contract labor, and other costs.

(e) The commission may authorize the use of overtime or contract labor to process expedited applications. The overtime or contract labor authorized under this section is not included in the calculation of the number of full-time equivalent commission employees allotted under other law.

(f) The commission may pay for compensatory time, overtime, or contract labor used to implement this section.

(g) A rule adopted under this section must be consistent with Chapter 2001, Government Code. A rule adopted under this section regarding notice must include a provision to require an indication that the application is being processed in an expedited manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 808 (S.B. [1756](#)), Sec. 1, eff. June 14, 2013.

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an operating permit, or an



authorization to use a standard permit, the commission shall send notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 382.0511 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 5.01, eff. September 1, 2007.

Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION. The commission shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by Section 382.031(a).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0518. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information

presented at any hearing held under Section 382.056(k), the commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit, permit amendment, or special permit. The commission may refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by Section 382.020, Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under Section 382.05196 for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.162, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 3, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.25, eff. September 1, 2011.

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the

commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

- (1) the date the facility intends to cease operating;
- (2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and
- (3) any other necessary and relevant information the commission by rule deems appropriate.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission

finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code, and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including

protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(b), eff. September 1, 2005.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection

of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities



affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly

emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1023, Sec. 3, eff. June 20, 2003.

Sec. 382.051865. STATIONARY NATURAL GAS ENGINES USED IN COMBINED HEATING AND POWER SYSTEM. (a) In this section, "natural gas engine" includes a natural gas internal combustion engine, natural gas stationary internal combustion reciprocating engine, and natural gas turbine. The term does not include a natural gas engine that powers a motor vehicle as defined by Section 382.003(9-a), Health and Safety Code.

(b) This section applies only to a stationary natural gas engine used in a combined heating and power system.

(c) The commission shall issue a standard permit or permit by rule for stationary natural gas engines used in a combined heating and power system that establishes emission limits for air contaminants released by the engines.

(d) The commission in adopting a standard permit or permit by rule under this section may consider:

(1) the geographic location in which a stationary natural gas engine may be used, including the proximity to an area designated as a nonattainment area;

(2) the total annual operating hours of a stationary natural gas engine;

(3) the technology used by a stationary natural gas engine;

(4) the types of fuel used to power a stationary natural gas engine; and

(5) other emission control policies of the state.

(e) The commission in adopting a standard permit or permit by rule under this section may not distinguish between the end-use functions powered by a stationary natural gas engine.

(f) The commission must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per unit of total energy output. The commission shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1175 (H.B. [3268](#)), Sec. 1, eff. June 17, 2011.

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with another person.

(b) The comptroller of public accounts shall establish an account within the clean air account to be known as the emissions reductions incentives account.

(c) The emissions reductions incentives account consists of money from:

(1) gifts, grants, or donations to the account for a designated or general use;

(2) money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives

under a program developed under Section 382.051867 and administrative expenses associated with providing the incentives or the incentive program established under that section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1346, Sec. 3, eff. June 15, 2007.

(f) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1023, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 3, eff. June 15, 2007.

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the

facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization of air contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue

or deny a permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.  
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.04, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(c), eff. September 1, 2005.

Sec. 382.05192. REVIEW AND RENEWAL OF EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.  
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.05, eff. Sept. 1, 2001.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION.

(a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment improvements and emissions reductions necessary to meet the requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the

facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

- (A) wind power;
- (B) biomass gasification power; and
- (C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program

established under this section are not transferrable.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(e) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(f) The commission may adopt rules as necessary to implement



and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or revoke a multiple plant permit.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.  
Amended by Acts 2001, 77th Leg., ch. 935, Sec. 1, eff. June 14, 2001.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

- (1) the standard permit is enforceable;
- (2) the commission can adequately monitor compliance with the terms of the standard permit; and
- (3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written

response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 2, eff. September 1, 2005.

Sec. 382.05196. PERMITS BY RULE. (a) Consistent with Section 382.051, the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of air contaminants to the atmosphere. The commission may not adopt a permit by rule authorizing any facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission by rule shall specifically define the terms and conditions for a permit by rule under this section.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES.

(a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on

the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. [1134](#)), Sec. 1, eff. June 17, 2011.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned

maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. [1134](#)), Sec. 1, eff. June 17, 2011.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. [1134](#)), Sec. 1, eff. June 17, 2011.

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate

a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

- (1) are under the control of the same person or are under the control of persons under common control;
- (2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;
- (3) are operationally dependant; and
- (4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:
  - (A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;
  - (B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and
  - (C) is operationally dependant on the facilities being aggregated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. [1134](#)), Sec. 1, eff. June 17, 2011.

Sec. 382.05197. MULTIPLE PLANT PERMIT: NOTICE AND HEARING.

(a) An applicant for a permit under Section 382.05194 shall publish notice of intent to obtain the permit in accordance with Section 382.056, except that the notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given.

(b) The commission may authorize an applicant for a permit for an existing facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide

notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05194 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a multiple plant permit may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 2, eff. June 14, 2001.  
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(d), eff. September 1, 2005.

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS.

(a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

(1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;

(2) each cement or fly ash storage silo and weigh hopper must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;

(3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;

(4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;

(5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a five-minute period as determined using United States Environmental Protection Agency Test Method 22 as that method existed on September

1, 2003;

(6) if a cement or fly ash silo is filled during nondaylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

(7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;

(8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);

(9) a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment;

(10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;

(11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;

(12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;

(13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;

(14) production of concrete at the plant must not exceed 300 cubic yards per hour;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;



(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission if the plant is located in an area that is not subject to municipal zoning regulation.

(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382.05196; or

(2) Section 382.056 to obtain a permit issued under Section

382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the manner in which the executive director may be contacted for further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government

Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit. The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

- (1) mail the response to each person who filed a comment;
- and
- (2) make the response available to the public.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL. In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary,

junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.163, eff. Sept. 1, 1995.

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The commission may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smeltery for processing lead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.164, eff. Sept. 1, 1995.

Sec. 382.054. FEDERAL OPERATING PERMIT. Subject to Section 382.0511(c), a person may not operate a federal source unless the person has obtained a federal operating permit from the commission under Section 382.0541, 382.0542, or 382.0543.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.09, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 10, eff. June 9, 1993;

Acts 1995, 74th Leg., ch. 76, Sec. 11.165, eff. Sept. 1, 1995.

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The commission may:

(1) require a federal source to obtain a permit under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(3) require facilities or federal sources that are new or modified and are subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412);

(4) establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

(5) issue initial permits with terms not to exceed five years for federal sources under Title V of the federal Clean Air Act, with terms not to exceed five years for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g);

(7) reopen and revise an affected federal operating permit if:

(A) the permit has a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued;

(B) additional requirements become applicable to an affected source under the acid rain program;

(C) the federal operating permit contains a material

mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the commission;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The commission by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the commission may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(e) Subsections (a)(3) and (4) do not prohibit the applicability of at least the best available control technology to a

new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 11, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.166, eff. Sept. 1, 1995.

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) A federal source is eligible for a permit required by Section 382.054 if from the information available to the commission, including information presented at a hearing held under Section 382.0561, the commission finds that:

(1) the federal source will use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412), the federal source will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal source; or

(B) any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency; and

(3) the federal source will comply with the following requirements, if applicable:

(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and the regulations adopted under that title;

(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515) that implements the relevant requirements of that Act, including any revisions to the plan;

(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or

D, Title I of the federal Clean Air Act (42 U.S.C. 7401-7515);

(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section 7411), including Subsection (d) of that section;

(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;

(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) or the regulations adopted under that title;

(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);

(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);

(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);

(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671-7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and

(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470-7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c).

(b) The commission shall:



(1) take final action on an application for a permit, permit revision, or permit renewal within 18 months after the date on which the commission receives an administratively complete application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the commission fails to take final action as required by Subsection (b)(1) or (4), a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without additional delay if it finds that the commission's failure to act is arbitrary or unreasonable.

(d) Subsection (a)(2) does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 12, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT.

(a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the commission is subject to review at least every five years after the date of issuance to determine

whether the authority to operate should be renewed.

(b) The commission by rule shall establish:

(1) the procedures for notifying a permit holder that the permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(d) The commission shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the commission does not act on an application for permit renewal within 18 months after the date on which the commission receives an administratively complete application, a person who participated in the public participation process or a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the commission shall consider:

(1) all applicable requirements in Section 382.0542(a)(3);  
and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The commission shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed

change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the commission fails to issue or deny the renewal permit before the end of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the commission that the commission needs to process the application on or before the time specified in writing by the commission.

(h) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 13, eff. June 9, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT.

(a) A preconstruction permit issued or renewed by the commission is subject to review to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review:

(A) every 10 years after the date of issuance; or

(B) on the filing of an application for an amendment to the permit, if:

(i) the applicant is subject to Section 382.056;

(ii) the application is filed with the commission not more than three years before the date the permit is scheduled to expire; and

(iii) the applicant does not object to having the permit subjected to review at that time; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a

provision requiring the permit to be renewed at a period of between five and 10 years.

(b) The commission by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew the permit;

(2) the general requirements for an application for renewal of a preconstruction permit; and

(3) the procedures for reviewing and acting on renewal applications.

(c) Not less than 180 days before the date on which the renewal application is due, the commission shall provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal application and the information to be included in the application.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The commission shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements. The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Sections 382.0518 and 382.0541.

(f) On or before the 180th day after the date on which an application for renewal is filed, the commission shall renew the permit or, if the commission determines that the facility will not meet the requirements for renewing the permit, shall:

(1) set out in a report to the applicant the basis for the

commission's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the commission's requirements, that:

(A) includes a final date for meeting the commission's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the commission's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a commission order issued following a contested case proceeding held under this section.

(h) If the holder of a preconstruction permit to whom the commission has mailed notice under this section does not apply for renewal of that permit by the date specified by the commission under this section, the permit shall expire at the end of the period described in Subsection (a).

(i) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 14, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 1, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.14, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 168 (S.B. [1673](#)), Sec. 1, eff. May 22, 2007.

Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING. (a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or

a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

- (1) a description of the location or proposed location of the facility or federal source;
- (2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);
- (3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;
- (4) a description, including a telephone number, of the

manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures

provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

- (1) the information required by Subsection (b);
- (2) a summary of the preliminary decision;
- (3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);
- (4) a description of the manner in which comments regarding the preliminary decision may be submitted; and
- (5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

- (1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or
- (2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

- (1) The executive director, in accordance with procedures



adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

- (1) the applicant;
- (2) any person who submitted comments during the public comment period;
- (3) any person who requested to be on the mailing list for the permit action; and
- (4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

- (1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;
- (2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1350, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 9.0035(e), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 809 (S.B. [1472](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.26, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 45, eff. September 1, 2011.

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) Public hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under Chapter 2001, Government Code.

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a federal operating permit under Section 382.0543 is administratively

complete and before the beginning of the public comment period, the commission or its designee shall prepare a draft permit.

(c) The commission or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

(1) information submitted by the application, subject to applicable confidentiality laws;

(2) the executive director's analysis of the proposed action; and

(3) a copy of the draft permit.

(e) The commission or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543. Any person may submit a written statement to the commission during the public comment period. The commission or its designee shall receive public comment for 30 days after the date on which notice of the public comment period is published. The commission or its designee may extend or reopen the comment period if the executive director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the commission or its designee finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any

condition of the draft permit is inappropriate or that the preliminary decision of the commission or its designee to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) The commission or its designee shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 16, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.168, eff. Sept. 1, 1995.

Sec. 382.0562. NOTICE OF DECISION. (a) The commission or its designee shall send notice of a proposed final action on a federal operating permit by first-class mail to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of the commission or its designee may petition the administrator in accordance with Section 382.0563 and rules adopted under that section;

(2) state the date by which the petition must be filed;  
and

(3) explain the petition process.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 17, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR. (a) The commission by rule may provide for public petitions to the

administrator in accordance with Section 505 of the federal Clean Air Act (42 U.S.C. Section 7661d).

(b) The petition for review to the administrator under this section does not affect:

(1) a permit issued by the commission or its designee; or

(2) the finality of the commission's or its designee's action for purposes of an appeal under Section 382.032.

(c) The commission or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the commission receives the objection.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 18, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES.

The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 19, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a)

The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. [2201](#)), Sec. 3, eff. June 18, 2005.

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(b) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting the deadline imposed by this subsection without creating an

extraordinary burden on the resources of the commission.

(c) The permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALY FEASIBLE NOT REQUIRED; CONSIDERATION OF TECHNOLOGY TO BE ACHIEVABLE FOR CERTAIN PURPOSES PROHIBITED. (a) An applicant for a permit under this chapter for a project in connection with which advanced clean energy technology, federally qualified clean coal technology, or another technology is proposed to be used is not required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable rate, that the technology proposed to be used has been demonstrated to be feasible in a commercial operation.

(b) The commission may not consider any technology or level of emission reduction to be achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by the commission under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 4, eff. September 1, 2009.

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility if it is found on investigation that such changes will not make a significant

contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission shall adopt rules specifically defining the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 20, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 406, Sec. 6, eff. Aug. 30, 1999.

Sec. 382.058. NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

(d) If the commission considers air dispersion modeling



information in the course of adopting an exemption under Section 382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant, and evidence regarding air dispersion modeling may not be submitted at a hearing under Section 382.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 391, Sec. 1, 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 7, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.002, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (g).

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(b) The commission shall provide an opportunity for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or

denying the permit amendment not later than the 120th day after the date of issuance of the draft permit under Subsection (c).

(e) The commission shall send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562.

(f) A person affected by a decision of the commission to issue or deny a permit amendment may move for rehearing and is entitled to judicial review under Section 382.032.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

(h) The commission shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.27, eff. September 1, 2011.

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY FORMER OR CURRENT EMPLOYEES. (a) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the commission determines that:

(1) a former employee participated personally and substantially as an employee in the commission's review, evaluation, or processing of the application before leaving employment with the commission; and

(2) after leaving employment with the commission, that former employee provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The commission or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the commission or the executive director is also responsible in whole or in part for the design and construction or the operation of the unit.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section does not prejudice any

application other than an application in which the former employee provided assistance.

(e) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 140, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 22, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.170, eff. Sept. 1, 1995.

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The commission may delegate to the executive director the powers and duties under Sections 382.051-382.0563 and 382.059, except for the adoption of rules.

(b) An applicant or a person affected by a decision of the executive director may appeal to the commission any decision made by the executive director, with the exception of a decision regarding a federal operating permit, under Sections 382.051-382.055 and 382.059.

(c) Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:

(1) petition the administrator in accordance with rules adopted under Section 382.0563; or

(2) file a petition for judicial review under Section 382.032.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 23, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.171, eff. Sept. 1, 1995.

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The commission shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.);

(B) a renewal review of a permit issued under Section 382.0518 not subject to Title IV or V of the federal Clean Air Act;

(2) inspections of a federal source performed to enforce this chapter or rules adopted by the commission under this chapter until the federal source is required to obtain an operating permit under Section 382.054; and

(3) inspections performed to enforce this chapter or rules adopted by the commission under this chapter at a facility not required to obtain an operating permit under Section 382.054.

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit and for a variance.

(c) For purposes of the fees, the commission shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than \$25 or more than \$75,000.

(e) The commission by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the commission's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.18, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 24, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.172, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 8, eff. Aug. 30, 1999.

Sec. 382.0621. OPERATING PERMIT FEE. (a) The commission shall adopt, charge, and collect an annual fee based on emissions for each source that either:

(1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The commission by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall

be used.

(d) Except as provided by this section, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

- (1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and
- (2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(e) This section does not restrict the authority of the commission under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.19, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.173, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 9, eff. Aug. 30, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 3, eff. June 14, 2013.

Sec. 382.0622. CLEAN AIR ACT FEES. (a) Clean Air Act fees consist of:

- (1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;
- (2) \$2 of each fee collected for inspections of vehicles other than mopeds under Section 548.501, Transportation Code; and
- (3) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

(b) Except as provided by Subsection (b-1), Clean Air Act fees

shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or subsequent fiscal years only for the purposes stated in Subsection (b-2).

(c) The commission shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the commission may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The commission may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The commission is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the commission deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The commission and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(1), eff. June 8, 2007.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.20, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.174, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.209, eff. Sept. 1,



1997; Acts 1997, 75th Leg., ch. 333, Sec. 74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1075, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 203, Sec. 2, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 552, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(1), eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 11, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 5, eff. March 1, 2015.

Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order because of catastrophe under Section 5.515, Water Code.

(b) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.175, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 44, eff. Sept. 1, 1997.

Sec. 382.064. INITIAL APPLICATION DATE. An application for a federal operating permit is not required to be submitted to the commission before the approval of the Title V permitting program by the United States Environmental Protection Agency.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 26, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.176, eff. Sept. 1, 1995.

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials; and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but not more than 20,000.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse

environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 3.3 million or more or in a county adjacent to such a county.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1054, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1089 (S.B. 1250), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 46, eff. September 1, 2011.

Sec. 382.066. SHIPYARD FACILITIES. (a) In this section, "shipyard" means a shipbuilding or ship repair operation.

(b) In determining whether to issue, or in conducting a review of, a permit or other authorization issued or adopted under this chapter for a shipyard, the commission:

(1) may not require and may not consider air dispersion modeling results predicting ambient concentrations of noncriteria pollutants over coastal waters of the state; and

(2) shall determine compliance with noncriteria ambient air pollutant standards and guidelines according to the land-based off-property concentrations of air contaminants.

(c) This section does not limit the commission's authority to take an enforcement action in response to a condition that constitutes a nuisance.

Added by Acts 2001, 77th Leg., ch. 1166, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 382.065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(94), eff. Sept. 1, 2003.

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS.

(a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than

18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER D. PENALTIES AND ENFORCEMENT**

Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the

performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.180, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 45, eff. Sept. 1, 1997.

#### **SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS**

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the commission; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

- (1) abate a nuisance; and
- (2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.115. COOPERATIVE AGREEMENTS. A local government may execute cooperative agreements with the commission or other local governments:

- (1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and
- (2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.189, eff. Sept. 1, 1995.

#### **SUBCHAPTER G. VEHICLE EMISSIONS**

Sec. 382.201. DEFINITIONS. In this subchapter:

- (1) "Affected county" means a county with a motor vehicle emissions inspection and maintenance program established under Section 548.301, Transportation Code.
- (2) "Commercial vehicle" means a vehicle that is owned or leased in the regular course of business of a commercial or business

entity.

(3) "Fleet vehicle" means a motor vehicle operated as one of a group that consists of more than 10 motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(4) "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209.

(5) "Retrofit" means to equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(6) "Retrofit equipment" means emissions-reducing equipment designed to reduce air emissions and improve air quality that is installed after the manufacture of the original engine or exhaust or fuel system.

(7) "Vehicle" includes a fleet vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the

commission:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

(d) On adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, as a condition of obtaining a passing vehicle inspection report issued under Subchapter C, Chapter 548, Transportation Code, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F of that chapter, that the vehicle, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(e) The commission may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the commission in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspections and provide for a reasonable margin of profit. Any portion of the fee collected by the commission is a Clean Air Act fee under Section 382.0622.

(f) The commission:

(1) shall, no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for



participation in the testing network to ensure availability of an adequate number of testing stations.

(g) The commission shall:

(1) use part of the fee collected under Subsection (e) to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209; and

(2) to the extent practicable, distribute available funding created under Subsection (e) to participating counties in reasonable proportion to the amount of fees collected under Subsection (e) in those counties or in the regions in which those counties are located.

(h) Regardless of whether different tests are used for different vehicles as determined under Section 382.205, the commission may:

(1) set fees assessed under Subsection (e) at the same rate for each vehicle in a county or region; and

(2) set different fees for different counties or regions.

(i) The commission shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by commission rule, or both and shall implement that inspection program if the commission determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(j) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (o) unless the fuel is specifically authorized by the legislature.

(k) The commission by rule may establish classes of vehicles that are exempt from vehicle emissions inspections and by rule may establish procedures to allow and review petitions for the exemption of individual vehicles, according to criteria established by commission rule. Rules adopted by the commission under this subsection must be consistent with federal law. The commission by rule may establish fees to recover the costs of administering this subsection. Fees collected under this subsection shall be deposited to the credit of the clean air account, an account in the general

revenue fund, and may be used only for the purposes of this section.

(l) Except as provided by this subsection, a person who sells or transfers ownership of a motor vehicle for which a passing vehicle inspection report has been issued is not liable for the cost of emission control system repairs that are required for the vehicle subsequently to receive a passing report. This subsection does not apply to repairs that are required because emission control equipment or devices on the vehicle were removed or tampered with before the sale or transfer of the vehicle.

(m) The commission may conduct audits to determine compliance with this section.

(n) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds United States Environmental Protection Agency requirements is available.

(o) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(p) The commission may consider, as an alternative method of compliance with Subsection (o), fuels to achieve equivalent emissions reductions.

(q) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

(r) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.25, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 547, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1, Sec. 1, eff. Jan. 31, 1995; Acts 1995, 74th Leg., ch. 34, Sec. 1, 9(1), (3), eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.157, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.207, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg.,

ch. 1069, Sec. 1, eff. June 19, 1997. Renumbered from Health & Safety Code Sec. 382.037 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(2), eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 6, eff. March 1, 2015.

Sec. 382.203. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

(1) required to be registered in and is primarily operated in an affected county; and

(2) at least two and less than 25 years old; or

(3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

(1) a vehicle with United States governmental plates primarily operated in an affected county;

(2) a vehicle operated on a federal facility in an affected county; and

(3) a vehicle primarily operated in an affected county that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt" license plate.

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

- (A) on which at least \$100 has been spent to bring the vehicle into compliance; and
- (B) that the department:
  - (i) can verify was driven fewer than 5,000 miles since the last safety inspection; and
  - (ii) reasonably determines will be driven fewer than 5,000 miles during the period before the next safety inspection is required; and
- (4) a vehicle for which parts are not readily available.
- (d) The program does not apply to a:
  - (1) motorcycle;
  - (2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or
  - (3) vehicle that is registered but not operated primarily in a county or group of counties subject to a motor vehicle emissions inspection program established under Subchapter F, Chapter 548, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0372 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.204. REMOTE SENSING PROGRAM COMPONENT. (a) The commission and the Department of Public Safety of the State of Texas jointly shall develop a program component for enforcing vehicle emissions testing and standards by use of remote or automatic emissions detection and analysis equipment.

(b) The program component may be employed in any county designated as a nonattainment area within the meaning of Section 107(d) of the Clean Air Act (42 U.S.C. Section 7407) and its subsequent amendments, in any affected county, or in any county adjacent to an affected county.

(c) If a vehicle registered in a county adjacent to an affected county is detected under the program component authorized by this section as operating and exceeding acceptable emissions limitations in an affected county, the department shall provide notice of the violation under Section 548.306, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0373 and amended by Acts 2001, 77th Leg.,

ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.205. INSPECTION EQUIPMENT AND PROCEDURES. (a) The commission by rule may adopt:

(1) standards and specifications for motor vehicle emissions testing equipment;

(2) recordkeeping and reporting procedures; and

(3) measurable emissions standards a vehicle must meet to pass the inspection.

(b) In adopting standards and specifications under Subsection (a), the commission may require different types of tests for different vehicle models.

(c) In consultation with the Department of Public Safety of the State of Texas, the commission may contract with one or more private entities to provide testing equipment, training, and related services to inspection stations in exchange for part of the testing fee. A contract under this subsection may apply to one specified area of the state or to the entire state. The commission at least once during each year shall review each contract entered into under this subsection to determine whether the contracting entity is performing satisfactorily under the terms of the contract. Immediately after completing the review, the commission shall prepare a report summarizing the review and send a copy of the report to the speaker of the house of representatives, the lieutenant governor, and the governor.

(d) The Department of Public Safety of the State of Texas by rule shall adopt:

(1) testing procedures in accordance with motor vehicle emissions testing equipment specifications; and

(2) procedures for issuing a vehicle inspection report following an emissions inspection and submitting information to the inspection database described by Section 548.251, Transportation Code, following an emissions inspection.

(e) The commission and the Department of Public Safety of the State of Texas by joint rule may adopt procedures to encourage a stable private market for providing emissions testing to the public in all areas of an affected county, including:

(1) allowing facilities to perform one or more types of emissions tests; and

(2) any other measure the commission and the Department of Public Safety consider appropriate.

(f) Rules and procedures under this section must ensure that approved repair facilities participating in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under Section 382.209 have access to adequate testing equipment.

(g) Subject to Subsection (h), the commission and the Department of Public Safety of the State of Texas by rule may allow alternative vehicle emissions testing if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternative vehicle emissions testing; and

(3) the use of alternative testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(h) A rule adopted under Subsection (g) may not be more restrictive than federal regulations governing vehicle emissions testing.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1189, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 382.0374 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. [2305](#)), Sec. 7, eff. March 1, 2015.

Sec. 382.206. COLLECTION OF DATA; REPORT. (a) The commission and the Department of Public Safety of the State of Texas may collect inspection and maintenance information derived from the emissions inspection and maintenance program, including:

(1) inspection results;

(2) inspection station information;

(3) information regarding vehicles operated on federal facilities;

(4) vehicle registration information; and

(5) other data the United States Environmental Protection

Agency requires.

(b) The commission shall:

- (1) report the information to the United States Environmental Protection Agency; and
- (2) compare the information on inspection results with registration information for enforcement purposes.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997.  
Renumbered from Sec. 382.0375 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.207. INSPECTION STATIONS; QUALITY CONTROL AUDITS.

(a) The Department of Public Safety of the State of Texas by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. In developing the program for vehicle emissions inspections, the Department of Public Safety shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the Texas Department of Transportation, the commission shall require state and local transportation planning entities designated by the commission to prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the commission and the Texas Department of Transportation. This subsection does not restrict the Texas Department of Transportation's function as the transportation planning body for the state or its role in identifying and initiating specific transportation-related projects in the state.

(d) The Department of Public Safety may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance

program.

(e) The Department of Public Safety shall develop a challenge station program to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle to ensure quality control of a vehicle emissions inspection and maintenance system.

(f) The commission may contract with one or more private entities to operate a program established under this section.

(g) In addition to other procedures established by the commission, the commission shall establish procedures by which a private entity with whom the commission has entered into a contract to operate a program established under this section may agree to perform:

(1) testing at a fleet facility or dealership using mobile test equipment;

(2) testing at a fleet facility or dealership using test equipment owned by the fleet or dealership but calibrated and operated by the private entity's personnel; or

(3) testing at a fleet facility or dealership using test equipment owned and operated by the private entity and installed at the fleet or dealership facility.

(h) The fee for a test conducted as provided by Subsection (g) shall be set by the commission in an amount not to exceed twice the fee otherwise provided by law or by rule of the commission. An appropriate portion of the fee, as determined by the commission, may be remitted by the private entity to the fleet facility or dealership.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 547, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 34, Sec. 3, eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(41), eff. Sept. 1, 1995. Renumbered from Sec. 382.038 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.208. ATTAINMENT PROGRAM. (a) Except as provided by Section 382.202(j) or another provision of this chapter, the commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement



transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

(b) Participating agencies include the Texas Department of Transportation and metropolitan planning organizations designated by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(42), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.03, eff. Sept. 1, 2001. Renumbered from Sec. 382.039 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(c), eff. Sept. 1, 2003.

Sec. 382.209. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program subject to agency oversight that may include reasonable periodic commission audits.

(b) The commission shall provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. The programs shall be administered in accordance with Chapter 783, Government Code. Program costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. Not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section may be used for the administration of the programs, including program costs.

(c) The rules adopted under Subsection (a) must provide procedures for ensuring that a program implemented under authority of that subsection does not apply to a vehicle that is:

(1) registered under Section 504.501 or 504.502, Transportation Code; and

(2) not regularly used for transportation during the normal course of daily activities.

(d) Subject to the availability of funds, a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section shall provide monetary or other compensatory assistance for:

(1) repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements;

(2) a replacement vehicle or replacement assistance for a vehicle that has failed a required emissions test and for which the cost of repairs needed to bring the vehicle into compliance is uneconomical; and

(3) installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed under Subdivision (1). The commission and the Department of Public Safety of the State of Texas shall establish standards and specifications for retrofit equipment that may be used under this section.

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

(1) the vehicle is capable of being operated;

(2) the registration of the vehicle:

(A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for at least 12 of the 15 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor Vehicles, and the Public Safety Commission;

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

(f) A fleet vehicle, a vehicle owned or leased by a

governmental entity, or a commercial vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established and implemented under this section.

(g) A participating county may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county in the same region.

(h) Participation by an affected county in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program is not mandatory. To the extent allowed by federal law, any emissions reductions attributable to a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program in a county that are attained during a period before the county is designated as a nonattainment county shall be considered emissions reductions credit if the county is later determined to be a nonattainment county.

(i) Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

(1) the vehicle is gasoline-powered and is at least 10 years old;

(2) the vehicle owner meets applicable financial eligibility criteria;

(3) the vehicle meets the requirements provided by Subsections (e)(1) and (2); and

(4) the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j) The commission may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit,

and accelerated vehicle retirement program for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.03, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 2, eff. September 1, 2011.

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;  
(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) \$3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph

(C); and

(C) \$3,500 for a replacement vehicle of the current model year or the previous three model years that:

(i) is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii) has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must:

(1) except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds;

(3) have an odometer reading of not more than 70,000 miles; and

(4) be a vehicle the total cost of which does not exceed:

(A) for a vehicle described by Subsection (a)(2)(A) or (B), \$35,000; or

(B) for a vehicle described by Subsection (a)(2)(C), \$45,000.

(c) The commission may adopt any revisions made by the federal government to the emissions standards described by Subsection (b)(1).

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program

criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than the 10th business day after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(e) In rules adopted under this section, the commission shall require a mandatory procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

(f) In this section, "total cost" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 3, eff. September 1, 2011.

Sec. 382.211. LOCAL ADVISORY PANEL. (a) The commissioners court of a participating county may appoint one or more local advisory panels consisting of representatives of automobile dealerships, the automotive repair industry, safety inspection facilities, the public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments to advise the county regarding the operation of the county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

(b) The commissioners court may delegate all or part of the administrative and financial matters to one or more local advisory panels established under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.212. EMISSIONS REDUCTION CREDIT. (a) In this section, "emissions reduction credit" means an emissions reduction certified by the commission that is:

- (1) created by eliminating future emissions, quantified during or before the period in which emissions reductions are made;
- (2) expressed in tons or partial tons per year; and
- (3) banked by the commission in accordance with commission rules relating to emissions banking.

(b) To the extent allowable under federal law, the commission by rule shall authorize:

- (1) the assignment of a percentage of emissions reduction credit to a private, commercial, or business entity that purchases, for accelerated retirement, a qualified vehicle under a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program;
- (2) the transferability of an assigned emissions reduction credit;
- (3) the use of emissions reduction credit by the holder of the credit against any state or federal emissions requirements applicable to a facility owned or operated by the holder of the credit;

(4) the assignment of a percentage of emissions reduction credit, on the retirement of a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle, to the owner or lessor of the vehicle; and

(5) other actions relating to the disposition or use of emissions reduction credit that the commission determines will benefit the implementation of low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs established under Section 382.209.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.213. DISPOSITION OF RETIRED VEHICLE. (a) Except as provided by Subsection (c) and Subdivision (5) of this subsection, a vehicle retired under an accelerated vehicle retirement program authorized by Section 382.209 may not be resold or reused in its entirety in this or another state. Subject to the provisions of Subsection (i), the automobile dealer who takes possession of the vehicle must submit to the program administrator proof, in a manner adopted by the commission, that the vehicle has been retired. The vehicle must be:

- (1) destroyed;
- (2) recycled;
- (3) dismantled and its parts sold as used parts or used in the program;
- (4) placed in a storage facility of a program established under Section 382.209 and subsequently destroyed, recycled, or dismantled and its parts sold or used in the program; or
- (5) repaired, brought into compliance, and used as a replacement vehicle under Section 382.209(d)(2).

(a-1) The commission shall establish a partnership with representatives of the steel industry, automobile dismantlers, and the scrap metal recycling industry to ensure that:

- (1) vehicles retired under Section 382.209 are scrapped or recycled; and
- (2) proof of scrapping or recycling is provided to the commission.

(b) Not more than 10 percent of all vehicles eligible for retirement under this section may be used as replacement vehicles



under Subsection (a)(5).

(c) A vehicle identified by a local advisory panel as an existing or future collectible vehicle under Section 382.211 may be sold to an individual if the vehicle:

- (1) is repaired and brought into compliance;
- (2) is removed from the state;
- (3) is removed from an affected county; or
- (4) is stored for future restoration and cannot be

registered in an affected county except under Section 504.501 or 504.502, Transportation Code.

(d) Notwithstanding Subsection (a)(3), the dismantler of a vehicle shall scrap the emissions control equipment and engine. The dismantler shall certify that the equipment and engine have been scrapped and not resold into the marketplace. A person who causes, suffers, allows, or permits a violation of this subsection or of a rule adopted under this section is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. For purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Notwithstanding Subsection (d), vehicle parts not related to emissions control equipment or the engine may be resold in any state. The only cost to be paid by a recycler for the residual scrap metal of a vehicle retired under this section shall be the cost of transportation of the residual scrap metal to the recycling facility.

(f) Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in this state.

(g) In dismantling a vehicle under this section, the dismantler shall remove any mercury switches in accordance with state and federal law.

(h) The commission shall adopt rules:

(1) defining "emissions control equipment" and "engine" for the purposes of this section; and

(2) providing a procedure for certifying that emissions control equipment and vehicle engines have been scrapped or recycled.

(i) Notwithstanding any other provision of this section, and except as provided by this subsection, a dealer is in compliance with this section and incurs no civil or criminal liability as a result of the disposal of a replaced vehicle if the dealer produces proof of transfer of the replaced vehicle by the dealer to a dismantler. The defense provided by this subsection is not available to a dealer who

knowingly and intentionally conspires with another person to violate this section.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.05, eff. June 8, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.005, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 4, eff. September 1, 2011.

Sec. 382.214. SALE OF VEHICLE WITH INTENT TO DEFRAUD. (a) A person who with intent to defraud sells a vehicle in an accelerated vehicle retirement program established under Section 382.209 commits an offense that is a third degree felony.

(b) Sale of a vehicle in an accelerated vehicle retirement program includes:

(1) sale of the vehicle to retire the vehicle under the program; and

(2) sale of a vehicle purchased for retirement under the program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.215. SALE OF VEHICLE NOT REQUIRED. Nothing in this subchapter may be construed to require a vehicle that has failed a required emissions test to be sold or destroyed by the owner.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.216. INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. The commission, the Texas Department of Transportation, and the Public Safety Commission may, subject to federal limitations:

(1) encourage counties likely to exceed federal clean air standards to implement voluntary:

(A) motor vehicle emissions inspection and maintenance

programs; and

(B) low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs;

(2) establish incentives for counties to voluntarily implement motor vehicle emissions inspection and maintenance programs and low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs; and

(3) designate a county that voluntarily implements a motor vehicle emissions inspection and maintenance program or a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program as a "Clean Air County" and give preference to a county designated as a Clean Air County in any federal or state clean air grant program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.218. REQUIRED PARTICIPATION BY CERTAIN COUNTIES. (a) This section applies only to a county with a population of 800,000 or more that borders the United Mexican States.

(b) A county that was at any time required, because of the county's designation as a nonattainment area under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), to participate in the vehicle emissions inspection and maintenance program under this subchapter and Subchapter F, Chapter 548, Transportation Code, shall continue to participate in the program even if the county is designated as an attainment area under the federal Clean Air Act.

Added by Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 4, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 47, eff. September 1, 2011.

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) An amount described by Section 382.210(a)(2) may be used as a down payment toward the purchase of a replacement vehicle.

(b) An automobile dealer that participates in the procedures and programs offered by this chapter must be located in the state.

No dealer is required to participate in the procedures and programs provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.06, eff. June 8, 2007.

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS.

(a) Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section.

(b) A program under this section must be implemented in consultation with the commission and may include a program to:

- (1) expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;
- (2) develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;
- (3) develop and implement projects to implement the commission's smoking vehicle program;
- (4) develop and implement projects in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia and vehicle inspection reports and to carry out appropriate actions;
- (5) develop and implement programs to enhance transportation system improvements; or
- (6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

(c) Money that is made available for the implementation of a program under Subsection (b) may not be expended for local government fleet or vehicle acquisition or replacement, call center management, application oversight, invoice analysis, education, outreach, or advertising purposes.

(d) Fees collected under Sections 382.202 and 382.302 may be used in an amount not to exceed \$7 million per fiscal year for projects described by Subsection (b), of which \$2 million may be used only for projects described by Subsection (b)(4). The remaining \$5 million may be used for any project described by Subsection (b). The fees shall be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209 and only on a matching basis, whereby the commission provides money to a county in the same amount that the county dedicates to a project authorized by Subsection (b). The commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit registration insignia and vehicle inspection reports.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.07, eff. June 8, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 13, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1038 (H.B. 2859), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 8, eff. March 1, 2015.

#### **SUBCHAPTER H. VEHICLE EMISSIONS PROGRAMS IN CERTAIN COUNTIES**

Sec. 382.301. DEFINITIONS. In this subchapter:

(1) "Early action compact" means an agreement entered into before January 1, 2003, by the United States Environmental Protection Agency, the commission, the governing body of a county that is in attainment of the one-hour national ambient air quality standard for ozone but that has incidents approaching, or monitors incidents that exceed, the eight-hour national ambient air quality standard for ozone, and the governing body of the most populous municipality in that county that results in the submission of:

(A) an early action plan to the commission that the commission finds to be adequate; and

(B) a state implementation plan revision to the United States Environmental Protection Agency on or before December 31, 2004, that provides for attainment of the eight-hour national ambient air quality standard for ozone on or before December 31, 2007.

(2) "Participating county" means a county that is a party to an early action compact.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

Sec. 382.302. INSPECTION AND MAINTENANCE PROGRAM. (a) A participating county whose early action plan contains provisions for a motor vehicle emissions inspection and maintenance program and has been found adequate by the commission may formally request the commission to adopt motor vehicle emissions inspection and maintenance program requirements for the county. The request must be made by a resolution adopted by the governing body of the participating county and the governing body of the most populous municipality in the county.

(b) After approving a request made under Subsection (a), the commission by resolution may request the Public Safety Commission to establish motor vehicle emissions inspection and maintenance program requirements for the participating county under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The motor vehicle emissions inspection and maintenance program requirements for the participating county may include exhaust emissions testing, emissions control devices and systems inspections, or other testing methods that meet or exceed United States Environmental Protection Agency requirements, and a remote sensing component as provided by Section 382.204. The motor vehicle emissions inspection and maintenance program requirements adopted for the participating county may apply to all or to a defined subset of vehicles described by Section 382.203.

(c) The commission may assess a fee for a vehicle inspection performed in accordance with a program established under this section. The fee must be in an amount reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the participating county's motor vehicle emissions inspection and maintenance program. An appropriate part of the fee as determined by commission rule may be retained by the station

owner, contractor, or operator to recover the cost of performing the inspection and provide for a reasonable margin of profit.

(d) The incentives for voluntary participation established under Section 382.216 shall be made available to a participating county.

(e) A participating county may participate in the program established under Section 382.209.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

**SUBCHAPTER I. PROGRAMS TO ENCOURAGE THE USE OF  
INNOVATIVE TECHNOLOGIES**

Sec. 382.401. ALTERNATIVE LEAK DETECTION TECHNOLOGY. (a) In this section, "alternative leak detection technology" means technology, including optical gas imaging technology, designed to detect leaks and emissions of air contaminants.

(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

- (1) on-site technical assistance; and
- (2) to the extent consistent with federal requirements:
  - (A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's compliance history and compliance summaries;
  - (B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and
  - (C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

(c) The owner or operator of a facility using an alternative leak detection technology shall repair and record an emission or leak of an air contaminant from a component subject to the commission's regulatory program for leak detection and repair that is detected by the alternative technology as provided by the commission's leak detection and repair rules in effect at the time of the detection. A repair to correct an emission or leak detected by the use of alternative leak detection technology may be confirmed using the same technology.

(d) As part of the program of incentives adopted under Subsection (b), the commission shall:

(1) ensure that the owner or operator of a facility records and repairs, if possible and within a reasonable period, any leak or emission of an air contaminant at the facility that is detected by the voluntary use of alternative leak detection technology from a component not subject to commission rules for leak detection and repair in effect on the date of detection;

(2) establish the reasonable period allowed for the repair of a component causing a leak or emission in a way that includes consideration of the size and complexity of the repair required;

(3) subject to commission reporting requirements only those components that are not repairable within the reasonable time frame established by the commission; and

(4) exempt from commission enforcement a leak or emission that is repaired within the reasonable period established by the commission.

(e) To the extent consistent with federal requirements, the commission may not take an enforcement action against an owner or operator of a facility participating in the program established under this section for a leak or an emission of an air contaminant that would otherwise be punishable as a violation of the law or of the terms of the permit under which the facility operates if the leak or emission was detected by using alternative technology and it would not have been detected under the commission's regulatory program for leak detection and repair in effect on the date of the detection.

Added by Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 1, eff. June 15, 2007.



**SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE**

Sec. 382.451. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE. (a) The commission and the Railroad Commission of Texas, the Department of Agriculture, and the Public Utility Commission of Texas shall jointly participate in the federal government process for developing federal greenhouse gas reporting requirements and the federal greenhouse gas registry requirements.

(b) The commission shall adopt rules as necessary to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. In adopting the rules, the commission shall adopt and incorporate by reference rules implementing the federal reporting requirements and the federal registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 382.501 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

Sec. 382.452. VOLUNTARY ACTIONS INVENTORY. The commission shall:

(1) establish an inventory of voluntary actions taken by businesses in this state or by state agencies since September 1, 2001, to reduce carbon dioxide emissions; and

(2) work with the United States Environmental Protection Agency to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.

Redesignated from Health and Safety Code, Section 382.502 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

**SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE**

Sec. 382.501. DEFINITIONS. In this subchapter:

(1) "Board" means the School Land Board.

(2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.

(3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.

(4) "Land commissioner" means the commissioner of the General Land Office.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.502. RULES. (a) The commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.503. STUDY; SELECTION OF LOCATION. (a) The land commissioner shall contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository.

(b) The land commissioner shall recommend suitable sites for carbon dioxide storage to the board based on the findings of the study.

(c) The board shall make the final determination of suitable locations for carbon dioxide storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION. (a) Once the location has been established for the

carbon dioxide repository, the board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the carbon dioxide repository.

(b) The board may contract for construction or operational services for the repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is established, the board may accept carbon dioxide for storage.

(b) The board by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository. If this state participates in a program that facilitates the trading of carbon credits, a fee under this subsection may be established as a percentage of the carbon credits associated with the storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU. (a) The commission by rule may establish standards for the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository.

(b) The bureau shall perform the measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository.

(c) The bureau shall serve as a scientific advisor for the measuring, monitoring, and permanent storage status verification of the carbon dioxide repository.

(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE. (a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository on a determination by the board that permanent storage has been verified and that the storage location has met all applicable state and federal requirements for closure of carbon dioxide storage sites.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of stored carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide repository.

(c) This section does not relieve a person who contracts with the board under Section 382.504(b) of liability for any act or omission regarding the construction or operation, as applicable, of the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.509. RATES FOR TRANSPORTATION. Neither the commission nor the board may establish or regulate the rates charged for the transportation of carbon dioxide to the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.510. ANNUAL REPORT. The land commissioner shall issue annually a report regarding the carbon dioxide repository. The report may be submitted electronically by posting on the General Land Office's Internet website. The report must include information regarding:

- (1) the total volume of carbon dioxide stored;
- (2) the total volume of carbon dioxide received for storage during the year; and
- (3) the volume of carbon dioxide received from each producer of carbon dioxide.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

## **CHAPTER 383. CLEAN AIR FINANCING ACT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 383.001. SHORT TITLE. This chapter may be cited as the Clean Air Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.002. POLICY AND PURPOSE. (a) The policy of the state and the purpose of this chapter are to:

- (1) safeguard state air resources from emissions of air contaminants and other pollution;
- (2) protect public health, general welfare, physical property, and the esthetic enjoyment of air resources by the public; and
- (3) maintain adequate visibility.

(b) It is the policy of the state that the control of air pollution is essential to the well-being and survival of state inhabitants and the protection of the environment. The control, prevention, and abatement of air pollution will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.003. DEFINITIONS. In this chapter:

(1) "Air contaminant" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(2) "Air pollution" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(3) "Bond" includes a note.

(4) "Coastal basin" means an area that:

(A) is defined and designated as a coastal basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Control facility" means a facility that has been certified by the commission, or by its executive secretary if the commission authorizes, as being designed to reduce or eliminate air pollution.

(7) "Disposal system" has the meaning assigned by Section 30.003(10), Water Code.

(8) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, but does not include a district or authority located entirely within a river authority unless the district or authority:

(A) has all or part of at least two municipalities within its boundaries;

(B) is governed by Chapter 56, 60, 61, 62, or 63, Water Code; or

(C) is created for the primary purpose of navigation of its coastal and inland waters.

(9) "Issuer" means a municipality, county, or district.

(10) "Real property" means land, a structure, a franchise or interest in land, water, land under water, riparian rights, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or

equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(11) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body of an issuer.

(12) "River authority" has the meaning assigned by Section 30.003(4), Water Code.

(13) "River basin" means an area that:

(A) is defined and designated as a river basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(14) "Security agreement" means a trust indenture or other instrument securing bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.198, eff. Sept. 1, 1995.

Sec. 383.004. CERTIFICATION OF CONTROL FACILITY BY COMMISSION. The commission may prescribe necessary criteria and procedures for certifying a control facility and may limit certification to confirmation that a proposed facility is intended to control air pollution. Certification of a control facility's adequacy or expected performance or of other specifications is not necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.199, eff. Sept. 1, 1995.

Sec. 383.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the United States Constitution or Texas Constitution, an issuer by resolution may provide an alternate procedure that conforms to those constitutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.006. EFFECT OF CHAPTER ON OTHER LAW. (a) This

chapter does not limit the authority of the commission, a district, or a local government in performing a power or duty provided by other law. This chapter does not limit the authority of the commission or a local government to adopt and enforce rules or carry out duties under Chapter 382 (Texas Clean Air Act).

(b) Chapter 382 (Texas Clean Air Act) shall be enforced without regard to ownership of a control facility financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate or recover damages for a condition of pollution or other nuisance. A person purchasing or using a control facility under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the control facility.

(d) An issuer may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.200, eff. Sept. 1, 1995.

#### **SUBCHAPTER B. OPERATION OF CONTROL FACILITY**

Sec. 383.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a control facility and may acquire real property as the issuer considers appropriate for the control facility.

(b) An issuer may enter into a lease or other contract under which another person uses or acquires the issuer's control facility. An issuer may sell a control facility, by installment payments or otherwise, to any person on conditions the issuer considers desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.012. LOCATION OF CONTROL FACILITY. (a) A control facility may be located on the property of any person.

(b) A control facility of a municipality must be located in whole or in part within:



(1) the boundaries of the municipality; or

(2) the municipality's extraterritorial jurisdiction, as determined under Chapter 42, Local Government Code.

(c) A control facility of a river authority may be located outside the river authority's boundaries if it is located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries. A control facility of a river authority may be located anywhere in the state if it is financed at the same time and with the same bond issue as a control facility located within the river authority's boundaries or located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries.

(d) A control facility of a county or a district other than a river authority must be located in whole or in part within the county's or district's boundaries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.013. CONTRACTS. (a) A lease or other contract entered into under this chapter may be for the term agreed to by the parties. The lease or other contract may provide that it continues in effect until specified bonds or refunding bonds issued in place of the specified bonds are fully paid.

(b) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a construction contract let by an issuer, except that an issuer is not required to receive construction bids on a project.

(c) Any law requiring competitive bids does not apply to a construction contract for a project authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1064, Sec. 34, eff. Sept. 1, 1999.

Sec. 383.014. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be

accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a control facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.015. TAXATION. (a) An issuer is not required to pay a tax or other assessment on a control facility or part of a control facility.

(b) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(c) This chapter does not affect state law relating to an ad valorem tax imposed on a person who is not a public agency or political subdivision or on an interest held by such a person. A control facility purchased or used under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer for the facility's purchase or use as if the contract created a leasehold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. BONDS**

Sec. 383.021. AUTHORITY TO ISSUE. (a) An issuer may issue negotiable bonds, payable from revenues of the issuer, to pay costs related to the acquisition, construction, or improvement of a control facility, including:

- (1) the cost of real property acquired for the control facility;
- (2) finance charges;
- (3) interest before and during construction and for a period the issuer finds reasonable after completion of construction;
- (4) expenses incurred for architectural, engineering, and legal services;
- (5) expenses incurred for plans, specifications, surveys, and estimates;
- (6) expenses incurred in placing the control facility in operation;

(7) expenses of administration; and  
(8) other expenses necessary or incident to the acquisition, construction, or improvement.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) Pending issuance of definitive bonds, the issuer may authorize the delivery of negotiable interim bonds eligible for exchange or substitution by use of the definitive bonds.

(d) An issuer may not issue bonds to acquire an existing control facility solely for the purpose of leasing or selling it back to the person from whom it was acquired or to another person controlled by that person, unless the control facility is to be substantially improved before it is leased or sold back to such a person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.022. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the governing body;  
(2) be attested by the secretary of the governing body;  
and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the governing body of the issuer, except that the designation must include for each control facility to be financed with the bonds:

(1) the name of each person using or purchasing the control facility;

(2) the name of each person guaranteeing the contractual obligations of each person using or purchasing the control facility;  
or

(3) a statement, if applicable, that a group of persons will be using or purchasing the control facility.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of

whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.023. TERMS. Bonds issued under this chapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

- (1) bear interest at a rate and be sold at a price or under terms that the governing body of the issuer determines to be the most advantageous reasonably obtainable;
- (2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds;
- (3) be in coupon form; and
- (4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.024. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or other contract previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.025. PLEDGE OF REVENUE AS SECURITY; ELECTION. (a) An issuer's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of all or part of the revenues of the

issuer derived from:

(1) the use or sale of a control facility or disposal system; or

(2) services rendered by a disposal system.

(b) Except as provided by Section 383.026, before a municipality or county issues bonds secured under Subsection (a), the municipality or county must publish notice of its intention to issue the bonds at least once in a newspaper of general circulation within the boundaries of the municipality or county. Not later than 30 days after the date of the publication, not less than 10 percent of the qualified voters of the municipality or county may file a petition with the clerk or secretary of the governing body requesting the governing body to order an election on the issuance of the bonds. On the filing of the petition, the governing body shall order an election to be held in the municipality or county to determine whether the bonds may be issued as indicated in the notice. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds. If a petition is not filed within the period provided by this subsection, the governing body may issue the bonds without an election.

(c) The governing body shall fix and periodically revise payments under a lease or other contract for the use or sale of a control facility so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement. The governing body may direct the investment of money in the funds created by the resolution or security agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.026. PLEDGE OF OTHER UTILITY REVENUE; ELECTION. (a) In addition to the security under Section 383.025, a municipality's or county's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of other utility revenue of the municipality or county.

(b) Before issuing bonds secured by other utility revenue, the

governing body must order an election to determine whether the bonds may be issued. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. The manner of holding the election is governed by Chapter 1251, Government Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.272, eff. Sept. 1, 2001.

Sec. 383.027. SECURITY MAY APPLY TO ADDITIONAL BONDS. A pledge under Section 383.025 or 383.026 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge. Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.028. TRUSTS AS SECURITY. (a) The governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank having trust powers located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 383.029, the trust indenture may:

- (1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;
- (2) provide for amendment or modification of the trust indenture;
- (3) condition the right to spend the issuer's money or sell an issuer's control facility on approval of a registered professional engineer selected as provided by the trust indenture;
- (4) contain provisions governing issuance of bonds to replace lost, stolen, or mutilated bonds; and
- (5) otherwise provide for protecting and enforcing a bondholder's rights and remedies as is reasonable, proper, and lawful.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.029. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated control facility of the governing body and all property and rights appurtenant to the control facility.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the control facility, sell the control facility to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the control facility and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.030. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.031. INVESTMENT AND USE OF PROCEEDS. (a) The governing body may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds must be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds may be invested in:

(1) direct or indirect obligations of the United States

government or an agency of the United States government that mature in a manner specified by the resolution or a security agreement; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of lease or other contract revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.032. REFUNDING BONDS. (a) A governing body may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 383.033. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.034. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 384. AREA EMISSION REDUCTION CREDIT ORGANIZATIONS**

Sec. 384.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Emission reduction credit" means a credit recognized by the commission and the United States Environmental Protection Agency for reductions in emissions of air pollutants.

(3) "Nonattainment area" means an area so designated within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(4) "Organization" means an area emission reduction credit organization in this state.

(5) "Regional council of governments" means a council of governments designated as the metropolitan planning organization or a metropolitan planning organization in the event the council of governments is not so designated.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.201, eff. Sept. 1, 1995.

Sec. 384.002. PURPOSE. The purpose of an area emission reduction credit organization shall be to promote the coexistence of the improvement of air quality and economic development within the region through the acquisition and distribution of emission reduction credits. Its activities may include the use of emission reduction credits to help meet federal reasonable further progress requirements as well as using emission reduction credits to facilitate the issuance of permits.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.003. ESTABLISHMENT OF ORGANIZATION. A regional council of governments whose area of jurisdiction contains a nonattainment area may establish an organization on approval by the commission of its creation petition as provided by Section 384.015.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.202, eff. Sept. 1, 1995.

Sec. 384.004. FUNCTIONS; ORGANIZATION. An organization created under this chapter shall:

- (1) represent all counties within a nonattainment area;
- (2) have a board of directors appointed in accordance with the provisions of this chapter;
- (3) have the power, authority, and limitations provided by this chapter; and

(4) have bylaws setting forth its organization and procedures, including provisions for conflicts of interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.005. OFFSET REQUIREMENTS. All transactions of an organization involving emission reduction credits shall be subject to the offset requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.006. LOCATION RESTRICTION. There shall not be more than one organization within a metropolitan statistical area or consolidated metropolitan statistical area.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.007. STAFF. The regional council of governments may provide staff to an organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.008. BOARD OF DIRECTORS. (a) The board of directors of an organization shall consist of not less than six and not more than 21 appointed members, provided, however, that the number of appointed members is divisible by three. The appointed members are appointed by and may be removed for cause by the governing body of the regional council of governments. The appointed members serve three-year terms, with one-third of the members' terms expiring each year. In order to stagger the terms, the initial appointees of a board of directors shall draw lots to determine which one-third serves for one year, which one-third serves for two years, and which one-third serves for three years. In addition, the board of directors shall have one ex officio nonvoting member from the commission, designated by the executive director of the commission to act as a liaison between the commission and the area emission

reduction credit organization.

(b) The appointed members of the board of directors shall represent the general public, large industrial sources of emissions, small regulated businesses, and environmental and economic development interests. Each county in the nonattainment area shall be represented on the board of directors, and other areas in the region shall be represented in a manner that reflects the relative contributions of each area to total emissions or potential emission reductions.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.203, eff. Sept. 1, 1995.

Sec. 384.009. REMOVAL FOR CAUSE. The regional council of governments appointing a member of the board of directors of an organization may remove such member for cause if the member:

(1) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(2) is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board of directors.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.010. CONFLICT OF INTEREST. A member of a board of directors may not vote on a matter in which the member or the member's employer has a direct financial interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.011. AUTHORITY. The board of directors of an organization shall have independent decision-making authority and shall not be required to have its decisions reviewed by the governing body of the regional council of governments. A regional council of governments shall not have any liability under any contracts entered

into by an organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.012. POWERS AND DUTIES. An organization shall have the authority to:

- (1) receive and use funds;
- (2) have an account at the Texas Natural Resource Conservation Commission Air Emission Reduction Credit Bank;
- (3) acquire emission reduction credits through purchase, donation, or other means;
- (4) transfer emission reduction credits by sale or other means;
- (5) identify, evaluate, promote, initiate, and facilitate potential projects and strategies to generate emission reduction credits;
- (6) provide financial assistance for projects to generate emission reduction credits;
- (7) employ staff;
- (8) enter into contracts; and
- (9) consider sustainability of projects.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.204, eff. Sept. 1, 1995.

Sec. 384.013. PROHIBITIONS. An organization created under this chapter shall have no regulatory or taxing authority.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.014. ANNUAL REPORT. By March 1 of each year each area organization shall file with the commission and the regional council of governments an annual report for the preceding calendar year. The annual report shall contain a financial accounting, an accounting of emission reduction credits, and a listing of all emission reduction credit transactions entered into by the organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.205, eff. Sept. 1, 1995.

Sec. 384.015. PROCEDURE FOR FILING AND APPROVAL OF PETITION.

(a) A regional council of governments may authorize by resolution the submission of a petition to the commission requesting the creation of an organization under this chapter.

(b) The petition shall contain sufficient information to permit a determination of compliance with the provisions of this chapter and shall include a copy of the proposed bylaws and a plan for ensuring compliance with the requirements of this chapter.

(c) The commission shall review the petition for compliance with this chapter and hold a hearing in the region to obtain public comment on the petition.

(d) The commission shall approve the petition and creation of the organization if, after hearing, it finds that the requirements of this chapter are met and that such creation would be in the public interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.206, eff. Sept. 1, 1995.

Sec. 384.016. AUDIT. The commission shall have the authority to audit any organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.017. WITHDRAWAL OF APPROVAL. The commission shall have the authority to withdraw its approval of an organization created under this chapter and to dissolve such organization if it finds, after notice and hearing, that the organization has failed to comply with the provisions of this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.018. DISSOLUTION. An organization created under this chapter shall be dissolved by the commission 12 years after its creation unless the commission approves a petition, submitted and approved in accordance with Section 384.015, for an additional 12-year term. The commission may continue to approve successive 12-year terms for the organization as long as the need for the organization exists.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

#### **CHAPTER 385. INDOOR AIR QUALITY IN GOVERNMENT BUILDINGS**

Sec. 385.001. DEFINITIONS. In this chapter:

(1) "Air contaminant" means a gaseous, liquid, or solid substance or combination of substances that is in a form that is transported by or in air and has the potential to be detrimental to human health.

(2) "Board" means the Texas Board of Health.

(3) "Government building" means a building that is:

(A) owned, or leased for a term of at least three months, by a state governmental entity or by a political subdivision of this state, including a county, municipality, special purpose district, or school district; and

(B) regularly open to members of the public or used by the state or local governmental entity for a purpose that involves regular occupancy of the building by an employee or by a person in the custody or control of the governmental entity such as a public school student.

(4) "Indoor air pollution" means the presence, in an indoor environment, of one or more air contaminants in sufficient concentration and of sufficient duration to be capable of causing adverse effects to human health.

Added by Acts 1995, 74th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1067, Sec. 1, eff. Sept. 1,

2001.

Sec. 385.002. POWERS AND DUTIES OF BOARD. (a) The board by rule shall establish voluntary guidelines for indoor air quality in government buildings, including guidelines for ventilation and indoor air pollution control systems. The board may adopt other rules necessary to implement this chapter.

(b) In establishing the guidelines, the board shall consider:

(1) the potential chronic effects of air contaminants on human health;

(2) the potential effects of insufficient ventilation of the indoor environment on human health;

(3) the potential costs of health care for the short-term and long-term effects on human health that may result from exposure to indoor air contaminants; and

(4) the potential costs of compliance with a proposed guideline.

(c) A guideline adopted under this chapter may include a contaminant concentration, a control method, a sampling method, a ventilation rate, design, or procedure, or a similar recommendation.

(d) The board's guidelines may differ for different pollution sources or different areas of the state and may differ for buildings that are regularly occupied or visited by children.

Added by Acts 1995, 74th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2001.

Sec. 385.003. LIABILITY AND IMMUNITY. This chapter does not create liability for a governmental entity for an injury caused by the failure to comply with the voluntary guidelines established under Section 385.002.

Added by Acts 1995, 74th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2001.



**For expiration of this chapter, see Section 386.002.**

**CHAPTER 386. TEXAS EMISSIONS REDUCTION PLAN**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 386.001. DEFINITIONS.

In this chapter:

(1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.

(2) "Affected county" includes:

- (A) Bastrop County;
- (B) Bexar County;
- (C) Caldwell County;
- (D) Comal County;
- (E) Ellis County;
- (F) Gregg County;
- (G) Guadalupe County;
- (H) Harrison County;
- (I) Hays County;
- (J) Henderson County;
- (K) Hood County;
- (L) Hunt County;
- (M) Johnson County;
- (N) Kaufman County;
- (O) Nueces County;
- (P) Parker County;
- (Q) Rockwall County;
- (R) Rusk County;
- (S) San Patricio County;
- (T) Smith County;
- (U) Travis County;
- (V) Upshur County;
- (W) Victoria County;
- (X) Williamson County;
- (Y) Wilson County; and

(Z) any other county designated as an affected county by commission rule because of deteriorating air quality.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) Repealed by Acts 2005, 79th Leg., Ch. 1125, Sec. 22, eff. September 1, 2005.

(5) "Fund" means the Texas emissions reduction plan fund.

(6) "Incremental cost" means the cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(7) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(8) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended.

(9) "Plan" means the Texas emissions reduction plan.

(10) "Site" means the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person or persons under common control.

(10-a) "Stationary engine" means a machine used in a nonmobile application that converts fuel into mechanical motion, including turbines and other internal combustion devices.

(11) "Utility commission" means the Public Utility Commission of Texas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. [1796](#)), Sec. 14, eff. September 1, 2009.

Sec. 386.002. EXPIRATION. This chapter expires August 31, 2019.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.01, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 15, eff. September 1, 2009.

#### **SUBCHAPTER B. TEXAS EMISSIONS REDUCTION PLAN**

Sec. 386.051. TEXAS EMISSIONS REDUCTION PLAN. (a) The utility commission, the commission, and the comptroller shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a);

(7) a health effects study as provided by Section 386.252(a);

(8) air quality planning activities as provided by Section 386.252(a);

(9) a contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a)(14);

(10) the clean fleet program established under Chapter 392;

(11) the alternative fueling facilities program established under Chapter 393;

(12) the natural gas vehicle grant program and clean transportation triangle program established under Chapter 394;

(13) other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile

organic compounds in a nonattainment area or affected county;

(14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions; and

(15) the drayage truck incentive program established under Subchapter D-1.

(b-1) Under the plan, the commission may establish and administer other programs, including other grants or funding programs, as determined by the commission to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052. The commission may apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or the commission may establish separate criteria and requirements as necessary to achieve the commission's objectives. The additional programs shall be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state funds, the awarding and administration of grants and contracts, and achieving reductions in ozone precursors or particulate matter. Under this subsection, the commission may place a priority on programs that address the following goals:

(1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives, and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas; and

(2) reduction of emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1230, Sec. 25(1), eff. June 14, 2013.

(d) Equipment purchased before September 1, 2001, is not eligible for a grant or other funding under the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 3, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(1), eff. June 14, 2013.

Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION PROJECTS.

(a) In this section, "agricultural product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

- (1) a nonattainment area;
- (2) an affected county;
- (3) a destination inside the clean transportation triangle;

or

(4) a county adjacent to a county described by Subdivision (2) or that contains an area described by Subdivision (1) or (3).

(b) Notwithstanding other eligibility requirements, the commission shall by rule or policy provide specific eligibility requirements under the Texas Clean Fleet Program established under Chapter 392 and under the Texas natural gas vehicle grant program established under Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for projects relating to agricultural product transportation.

(c) The determining factor for eligibility for participation in a program established under Chapter 392 or Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for a project relating to agricultural product transportation is the overall accumulative net reduction in emissions of oxides of nitrogen in a nonattainment area, an affected county, or the clean transportation triangle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 2, eff. June 14, 2013.

Sec. 386.052. COMMISSION DUTIES. (a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the commission:

(1) shall:

(A) manage plan funds and oversee the plan;

(B) produce guidelines, protocols, and criteria for eligible projects;

(C) develop methodologies for evaluating project cost-effectiveness;

(D) prepare reports regarding the progress and effectiveness of the plan; and

(E) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan; and

(2) may hire staff and consultants needed to complete the commission's duties under this section and ensure timely review of applications and reimbursement of grant applicants' eligible project costs.

(b) Appropriate commission objectives include:

(1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;

(2) preventing areas of the state from being in violation of national ambient air quality standards;

(3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants;

(4) achieving reductions of emissions of diesel exhaust from school buses; and

(5) advancing new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. [3469](#)), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. [12](#)), Sec. 2.02, eff.

June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 6, eff. September 1, 2009.

Sec. 386.053. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Guidelines must include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions reductions not otherwise required by state or federal law.

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 30th day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. The public meeting shall be held in the affected state implementation plan area, and if the guidelines affect more than one state implementation plan area, a public meeting shall be held in each affected state implementation plan area affected by the guidelines.

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

(e) Because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements, the commission and the comptroller may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to

implement this chapter.

(f) Except as provided by Subsection (e), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.03, eff. June 8, 2007.

Sec. 386.054. MONITORING PROCEDURES. (a) The commission shall develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Monitoring procedures may include project reviews and contract requirements that the grant recipient provide information semiannually about the project. If the commission requires an annual report, the report shall contain a minimum amount of information required from a recipient and the report format shall be simple and convenient.

(b) Monitoring and reviewing procedures must be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans.

(c) The commission may revise monitoring and review procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.055. AVAILABILITY OF EMISSIONS REDUCTION CREDITS GENERALLY. (a) A project funded under a program established under this chapter may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program.

(b) An emissions reduction generated by a program established under this chapter:



(1) may not be used as a marketable emissions reduction credit or, except as provided by Section 386.056, to offset any emissions reduction obligation; and

(2) may be used to demonstrate conformity with the state implementation plan.

(c) A project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under a program established under this chapter unless:

(1) the project includes the transfer of the reductions that would otherwise be marketable credits to the state implementation plan or the owner or operator as provided by Section 386.056; and

(2) the reductions are permanently retired.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.056. AVAILABILITY OF EMISSIONS REDUCTIONS IN CERTAIN NONATTAINMENT AREAS. (a) An owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen if:

(1) the owner or operator of the site contributes to the fund \$75,000 for each ton of emissions that is used, not to exceed 25 tons annually and not to exceed one-half ton per day;

(2) the owner or operator of the site demonstrates to the commission's satisfaction that the site will be in full compliance with the commission's emissions reduction rules not later than the fifth anniversary of the date on which the emissions reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80 percent from the established baseline; and

(4) the commission approves a petition by the owner or operator that demonstrates that it is technically infeasible to comply with the commission's emissions reduction requirements above 80 percent.

(b) Funds collected under this section shall be used to generate emissions reductions needed to meet the commission's attainment demonstration.

(c) The commission shall verify that emissions reductions generated from funds collected under this section occur in the same nonattainment area in which the site that purchased the emissions reductions is located.

(d) The commission shall assure that the emissions reductions funded under the programs authorized by this subchapter used to offset commission requirements under this section benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. In this subsection, "community" means a justice of the peace precinct.

(e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1095 (H.B. [2129](#)), Sec. 2, eff. September 1, 2005.

Sec. 386.057. REVIEW AND REPORTING REQUIREMENTS. (a) The commission, in consultation with the advisory board, annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.

(b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission, in consultation with the advisory board, shall publish and submit to the legislature a biennial plan report. The report must include:

- (1) the information included in the annual reviews conducted under Subsection (a);
- (2) specific information for individual projects as

required by Subsection (c);

(3) information contained in reports received under Sections 386.205, 388.003(e), 388.006, and 391.104; and

(4) a summary of the commission's activities under Section 386.052.

(c) For projects funded as part of the infrastructure program under Subchapter C, the report must:

(1) describe and evaluate:

(A) the infrastructure facilities funded under that subchapter;

(B) the degree to which the funded facilities are supporting on-road or non-road diesel projects;

(C) the amount of fuel or electricity dispensed for each facility; and

(D) associated emissions reductions and cost-effectiveness; and

(2) make a finding regarding the need for additional appropriations from the fund to improve the ability of the program to achieve its goals.

(d) The report must:

(1) account for money received, money disbursed as grants, money reserved for grants based on project approvals, and any recommended transfer of money between allocations and must estimate future demand for grant funds under the plan;

(2) describe the overall effectiveness of the plan in delivering the emissions reductions that may be credited to air quality plans;

(3) evaluate the effectiveness of the plan in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation;

(4) describe adjustments made to project selection criteria and recommend any further needed changes or adjustments to the grant programs, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the plan's effectiveness and efficiency;

(5) describe adjustments made to the maximum cost-effectiveness amount and award amount;

(6) evaluate the benefits of addressing additional pollutants as part of the plan; and

(7) include legislative recommendations necessary to

improve the effectiveness of the plan.

(e) Repealed by Acts 2005, 79th Leg., Ch. 1125, Sec. 22, eff. September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 7, eff. September 1, 2009.

Sec. 386.058. TEXAS EMISSIONS REDUCTION PLAN ADVISORY BOARD.

(a) The Texas Emissions Reduction Plan Advisory Board consists of 15 members appointed as provided by this section and seven ex officio members as provided by this section.

(b) The governor shall appoint to the advisory board:

- (1) a representative of the trucking industry;
- (2) a representative of the air conditioning manufacturing industry;
- (3) a representative of the electric utility industry;
- (4) a representative of regional transportation; and
- (5) a representative of the nonprofit organization described by Section 387.002.

(c) The lieutenant governor shall appoint to the advisory board:

- (1) a representative of the engine manufacturing industry;
- (2) a representative of the air transportation industry;
- (3) a representative of the environmental community;
- (4) a representative of the fuel cell industry; and
- (5) a representative of the energy-efficient construction industry.

(d) The speaker of the house of representatives shall appoint to the advisory board:

- (1) a representative of consumer groups;
- (2) a representative of the construction industry;
- (3) a representative of the automobile industry;
- (4) a representative of the agriculture industry; and
- (5) a representative of the fuel industry.

(e) Appointed members of the advisory board serve staggered four-year terms, with the terms of seven or eight appointed members expiring February 1 of each odd-numbered year. An appointed member may be reappointed to a subsequent term.

(f) Ex officio members of the advisory board are:

(1) one member of the senate appointed by the lieutenant governor;

(2) the presiding officer of the house standing committee having primary jurisdiction over matters related to environmental regulation;

(3) a representative of the commission, designated by the executive director;

(4) a representative of the General Land Office, designated by the Commissioner of the General Land Office;

(5) a representative of the comptroller's office, designated by the comptroller;

(6) a representative of the Railroad Commission of Texas, designated by the presiding officer of the agency; and

(7) a representative of the United States Environmental Protection Agency's Region 6 office, designated by the United States Environmental Protection Agency Region 6 administrator.

(g) The advisory board annually shall elect a presiding officer.

(h) The advisory board shall review the plan and shall recommend to the commission changes to revenue sources or financial incentives or any legislative, regulatory, or budgetary changes needed.

(i) The commission shall provide necessary staff support to the advisory board.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1328, Sec. 10, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 3, eff. June 14, 2013.

**SUBCHAPTER C. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM**

Sec. 386.101. DEFINITIONS. In this subchapter:

(1) "Cost-effectiveness" means the total dollar amount expended divided by the total number of tons of oxides of nitrogen emissions reduction attributable to that expenditure. Cost-effectiveness for the program as a whole and for particular projects under the program is calculated as provided by Sections 386.105 and 386.106.

(2) "Fuel cell" means an electrochemical device that uses fuel and oxidant to continuously generate electricity.

(3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(4) "Non-road diesel" means a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including:

- (A) non-road nonrecreational equipment and vehicles;
- (B) construction equipment;
- (C) locomotives;
- (D) marine vessels; and
- (E) other high-emitting diesel engine categories

established by the commission.

(5) "Non-road engine" means an internal combustion engine that is:

- (A) in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition;
- (B) in or on a piece of equipment that is intended to be propelled while performing its function; or
- (C) designed to be and capable of being carried or moved from one location to another.

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(7) "Program" means the diesel emissions reduction incentive program established under this subchapter.

(8) "Qualifying fuel" includes any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions

of emissions of oxides of nitrogen beyond reductions required by state or federal law.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells.

(10) "Retrofit" means to equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 3, eff. June 20, 2003.

Sec. 386.102. PROGRAM. (a) The commission shall establish and administer a diesel emissions reduction incentive program. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment areas and affected counties of the state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

- (1) purchase or lease of on-road or non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects; and
- (8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

(c) A project listed in Subsection (b) is not eligible if it is

required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(e) To improve the success of the program the commission:

(1) shall establish cost-effective limits for grants awarded under the program to an owner or operator of a locomotive or marine vessel that are lower than the cost-effectiveness limits applied to other emissions reductions grants;

(2) shall determine the maximum amount of reductions available from the locomotive and marine sectors and develop strategies to facilitate the maximum amount of reductions in these sectors; and

(3) shall include in the report required by Section 386.057(b) that is due not later than December 1, 2006, an analysis of the cost-effectiveness of the grants in these sectors.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 6, eff. September 1, 2005.

Sec. 386.103. APPLICATION FOR GRANT. (a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant



in order to improve the ability of the program to achieve its goals.

(b) An application for a grant under this subchapter must be made on an application provided by the commission and must contain information required by the commission, including:

- (1) a detailed description of the proposed project;
- (2) information necessary for the commission to determine whether the project meets eligibility requirements for the type of project proposed, including a statement of the amounts of any other public financial assistance the project will receive; and
- (3) other information the commission may require.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 5, eff. June 20, 2003.

Sec. 386.104. ELIGIBILITY REQUIREMENTS. (a) The commission shall establish criteria for setting priorities for projects eligible to receive grants under this subchapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project as described in Section 386.102 must meet the requirements of this section to be eligible for a grant under the program.

(c) For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement in this subsection. For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for a sufficient amount of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105. For a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or

affected county for a sufficient amount of use over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

(d) Each proposed project must meet the cost-effectiveness requirements of Sections 386.105 and 386.106.

(e) A proposed repower project must exceed commission requirements relating to baseline emissions levels of the engines being replaced under the project.

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies, after public notice and comment, and after consultation with the advisory board, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

(f-1) The commission may establish minimum percentage reduction standards alternative to the standards established under Subsection (f) as an incentive for the conversion of heavy-duty diesel on-road vehicle engines or non-road engines to operate under a dual-fuel configuration that uses natural gas and diesel fuels through an alternative fuel conversion system certified by the United States Environmental Protection Agency or the California Air Resources Board. In determining the emissions rate of the converted vehicle and engine to compute the emissions reductions that can be attributed to the conversion system, the commission may take into account whether the emissions certification requirements for the conversion system prevent fully accounting for the emissions reductions. If the commission determines it to be necessary and appropriate, the commission may consider under this subsection certified engine test information that demonstrates reductions of emissions of nitrogen oxides and other pollutants and other information to verify the emissions reductions.

(g) If a baseline emissions standard does not exist for on-road or non-road diesels in a particular category, the commission, for purposes of this subchapter, shall establish an appropriate baseline emissions level for comparison purposes.

(h) The commission may approve payments to offset the

incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel in a motor vehicle or on-road or non-road diesel if the proposed project as a whole, including the incremental fuel cost, meets the requirements of this subchapter. The commission shall develop an appropriate method for converting incremental fuel costs over the lifetime of the motor vehicle or on-road or non-road diesel into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

(i) If the commission determines that a heavy-duty motor vehicle or engine under this chapter must be decommissioned, the commission shall require the decommissioning to be carried out by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(j) The executive director shall waive any eligibility requirements established under this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. If the commission determines that a heavy-duty motor vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission shall ensure that the applicant has a legal right to decommission the vehicle or engine before awarding a grant to the applicant.

(l) The commission shall consider an application for a vehicle replacement or a fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier.

(m) The commission shall provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 6, eff. June

20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 835 (H.B. 3399), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 4, eff. June 14, 2013.

Sec. 386.105. CALCULATION OF COST-EFFECTIVENESS. (a) In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(b) The commission shall establish reasonable methodologies for evaluating project cost-effectiveness consistent with Subsection (a) and with accepted methods.

(c) The commission shall develop protocols for calculating oxides of nitrogen emissions reductions not otherwise required by state or federal law in nonattainment areas and affected counties of this state from representative project types over the life of the projects.

(d) The commission may include in cost-effectiveness determinations only reductions in oxides of nitrogen emissions that are achieved in nonattainment areas and affected counties of this state.

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 7, eff. June 20, 2003.

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(c) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.05, eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 5, eff. June 14, 2013.

Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS AMOUNT AND AWARD AMOUNT. After study of available emissions reduction technologies and costs and after public notice and comment, the commission, in consultation with the advisory board, may change the values of the maximum grant award criteria established in Section 386.106 to account for inflation or to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.108. INFRASTRUCTURE PROJECTS. (a) The commission shall provide funding under Section 386.252(a) for infrastructure projects.

(b) To implement the requirement of Subsection (a), the commission shall:

(1) solicit applications for a balanced mix of projects involving fueling and electrification infrastructure that is linked to motor vehicle and on-road and non-road diesel projects and consistent with program goals;

(2) coordinate infrastructure projects with motor vehicle and on-road and non-road diesel projects representing a broad range of fuels, technologies, and applications as appropriate and consistent with the goals of this chapter;

(3) adopt guidelines and criteria for infrastructure projects to be funded under the program; and

(4) oversee, monitor, and evaluate the use of grants awarded under this program and report on the effectiveness of this grant program in relation to the purposes and goals of this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 2, eff. September 1, 2011.

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. (a) The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to:

(A) motor vehicles;

(B) on-road and non-road diesels; and

(C) marine vessels;

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine; and

(4) a project to reduce air pollution and engine idling by relieving congestion through rail relocation or improvement at a rail intersection that is located in a nonattainment or near nonattainment area.

(b) The commission may provide funding to other state agencies to implement projects under Subsection (a)(3), including funding for the lease, purchase, or installation of idle reduction technologies and facilities at rest areas and other public facilities on major highway transportation routes located in areas eligible for funding or for marine vessels operating on water routes eligible for funding. Funding under this subsection may include reasonable operational costs determined by the commission to be needed for the initial start-up and proper operation of the idle reduction technologies. The state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection may, but is not required to, charge reasonable fees for the provision of idle reduction services provided that those fees are used to directly offset the cost of providing the services.

(c) In evaluating a request for funding of an eligible infrastructure project, the commission shall encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine at the state's ports and border crossings in affected areas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.06, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1165 (H.B. 160), Sec. 2, eff. June 15, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.012, eff. September 1, 2009.

Sec. 386.110. APPLICATION PACKAGE FOR INFRASTRUCTURE PROJECTS.

(a) The commission shall develop a simple, standardized application package for infrastructure project grants under this subchapter. The package must include:

- (1) an application form;
- (2) a brief description of:
  - (A) the program;
  - (B) the projects that are eligible for available

funding;

- (C) the selection criteria and evaluation process; and
- (D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

(c) The commission may not require an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.111. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the application. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.



(d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 7, eff. September 1, 2005.

Sec. 386.112. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE. (a) The commission shall develop a purchase or lease incentive program for new on-road diesels and shall adopt rules necessary to implement the program and to reimburse a purchaser or lessee of a new on-road diesel that is eligible for reimbursement of incremental costs under this subchapter.

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

(c) Only one incentive will be provided for each new on-road diesel. The incentive shall be provided to the purchaser if the on-road diesel is not purchased for the purpose of leasing the on-road diesel to another person, or to the lessee and not to the purchaser

if the on-road diesel is purchased for the purpose of leasing the on-road diesel to another person. A lease incentive for a new on-road diesel shall be prorated based on an eight-year lease term.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 9, eff. June 20, 2003.

Sec. 386.113. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE SCHEDULE. A new on-road diesel is eligible for reimbursement of incremental costs according to the following schedule:

Incentive emissions standard		Reimbursement amount
	(oxides of nitrogen)	
Date of manufacture (2001)	Date of manufacture (10/1/02- 9/30/06)	
2.5 g/bhp-hr NOx	1.2 g/bhp-hr NOx	up to \$15,000
1.5 g/bhp-hr NOx	0.5 g/bhp-hr NOx	up to \$25,000
0.0 g/bhp-hr NOx	0.0 g/bhp-hr NOx	up to \$25,000

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.114. MODIFICATION OF INCENTIVE EMISSIONS STANDARDS. After evaluating new technologies and after public notice and comment, the commission, in consultation with the advisory board, may change the incentive emissions standards established by Section 386.113 to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After

evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission, in consultation with the advisory board, may expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003.

Sec. 386.116. SMALL BUSINESS INCENTIVES. (a) In this section, "small business" means a business owned by a person who:

(1) owns and operates not more than two vehicles, one of which is:

(A) an on-road diesel with a pre-1994 engine model; or

(B) a non-road diesel with an engine with uncontrolled emissions; and

(2) has owned the vehicle described by Subdivision (1)(A) or (B) for more than one year.

(b) The commission by rule shall develop a method of providing fast and simple access to grants under this subchapter for a small business.

(c) The commission shall publicize and promote the availability of grants under this section to encourage the use of vehicles that produce fewer emissions.

(d) The commission shall include in the biennial plan report required by Section 386.057(b) a report of commission actions and results under this section.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 8, eff. September 1, 2005.

Sec. 386.117. REBATE GRANTS. (a) The commission shall adopt a process for awarding grants under this subchapter in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects. The process adopted under this section must:

- (1) designate certain types of projects, such as repowers, replacements, and retrofits, as eligible for rebates;
  - (2) project standardized oxides of nitrogen emissions reductions for each designated project type;
  - (3) assign a standardized rebate amount for each designated project type;
  - (4) allow for processing rebates on an ongoing first-come, first-served basis; and
  - (5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.
- (b) The commission may limit or expand the designated project types as necessary to further the goals of the program.
- (c) The commission may award rebate grants as a pilot project for a specific region or may award the grants statewide.
- (d) The commission may administer the rebate grants or may designate another entity to administer the grants.
- (e) The commission shall:
- (1) investigate the requirements for establishing an Internet-based application process for rebate grants and report those requirements to the legislature not later than December 31, 2007; or
  - (2) implement an Internet-based application process for rebate grants not later than June 1, 2008.
- (f) The commission or its designee shall notify potential applicants of any changes to the rebate grant process by its e-mail list service and posting those changes on its Internet website at least 30 days before the changes become effective.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 9, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. [12](#)), Sec. 2.07, eff. June 8, 2007.

**For expiration of this subchapter, see Section 386.162.**

**SUBCHAPTER D. MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM**

Sec. 386.151. DEFINITIONS. In this subchapter:

- (1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1230, Sec.

25(2), eff. June 14, 2013.

(2) "Light-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(2), eff. June 14, 2013.

Sec. 386.152. COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease of new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or electric drives for a purchaser or lessee who agrees to register and operate the vehicle in this state for a minimum period of time to be established by the commission.

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 6, eff. June 14, 2013.

Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE REQUIREMENTS. (a) A new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas is eligible for a \$2,500 incentive if the vehicle:

(1) has four wheels;

(2) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(3) was manufactured for use primarily on public streets, roads, and highways;

(4) is rated at not more than 9,600 pounds unloaded vehicle weight;

(5) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency;

(6) has, as applicable, a:

(A) compressed natural gas fuel system that complies with the:

(i) 2013 NFPA 52 Vehicular Gaseous Fuel Systems Code; and

(ii) American National Standard for Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(B) liquefied petroleum gas fuel system that complies with:

(i) the 2011 NFPA 58 Liquefied Petroleum Gas Code; and

(ii) Section VII of the 2013 ASME Boiler and Pressure Vessel Code; and

(7) was acquired on or after September 1, 2013, or a later date established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(b) If the commission determines that an updated version of a code or standard described by Subdivision (a)(6) is more stringent than the version of the code or standard described by Subdivision (a)(6), the commission by rule may provide that a vehicle for which a person applies for an incentive under Subsection (a) is eligible for the incentive only if the vehicle complies with the updated version

of the code or standard.

(b-1) The incentive under Subsection (a) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013.

(c) A new light-duty motor vehicle powered by electric drive is eligible for a \$2,500 incentive if the vehicle:

(1) has four wheels;

(2) was manufactured for use primarily on public streets, roads, and highways;

(3) has not been modified from the original manufacturer's specifications;

(4) is rated at not more than 8,500 pounds unloaded vehicle weight;

(5) has a maximum speed capability of at least 55 miles per hour;

(6) is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(A) has a capacity of not less than four kilowatt hours; and

(B) is capable of being recharged from an external source of electricity; and

(7) was acquired on or after September 1, 2013, or a later date as established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(d) The incentive under Subsection (c) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 6, eff. June 14, 2013.

Sec. 386.155. MANUFACTURER'S REPORT. At the beginning of but not later than July 1 of each year preceding the vehicle model year, a manufacturer of motor vehicles shall provide to the commission a list of the new vehicle models that the manufacturer intends to sell in this state during that model year that meet the incentive emissions standards established by the schedules set out under

Section 386.153. The manufacturer may supplement the list provided to the commission under this section as necessary to include additional new vehicle models the manufacturer intends to sell in this state during the model year.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 each year the commission shall publish a list of new model motor vehicles eligible for inclusion in an incentive under this subchapter as listed for the commission under Section 386.155. The commission shall publish supplements to that list as necessary to include additional new vehicle models.

(b) The commission shall publish the list of eligible motor vehicles on the commission's Internet website.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 7, eff. June 14, 2013.

Sec. 386.158. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE. (a) A person who purchases or leases a new light-duty motor vehicle described by Section 386.153 and listed under Section 386.156(a) is eligible to apply for an incentive under this subchapter.

(b) A lease incentive for a new light-duty motor vehicle shall be prorated based on a four-year lease term.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle who is eligible to apply for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:



Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 8, eff. June 14, 2013.

Sec. 386.160. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this subchapter.

(b) The commission shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the commission for an incentive payment under this subchapter. The commission shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) In addition to other forms developed and published under this section, the commission shall develop and publish a verification form by which, with information provided by the dealer or leasing agent, the commission can verify the sale of a vehicle covered by this subchapter. The verification form shall include at least the name of the purchaser, the vehicle identification number of the vehicle involved, the date of the purchase, and the name of the new motor dealer or leasing agent involved in the transaction. At the time of sale or lease of a vehicle eligible for an incentive under this subchapter, the dealer or leasing agent shall complete the verification form supplied to the dealer by the commission. The purchaser or lessee shall include the completed verification form as part of the purchaser's application for an incentive. The dealer shall maintain a copy of the completed verification form for at least two years from the date of the transaction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 9, eff. June 14, 2013.

Sec. 386.161. SUSPENSION OF PURCHASE OR LEASE INCENTIVES. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1230, Sec. 25(4), eff. June 14, 2013.

(b) If the balance available for motor vehicle purchase or lease incentives falls below 15 percent of the total allocated for the incentives during that fiscal year, the commission by order shall suspend the incentives until the date the comptroller can certify that the balance available in the fund for incentives is an amount adequate to resume the incentives or the beginning of the next fiscal year, whichever is earlier. If the commission suspends the incentives, the commission shall immediately notify all new motor vehicle dealers and leasing agents that the incentives have been suspended.

(c) The commission shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The commission may provide for issuing verification numbers over the telephone line.

(d) Reliance by a dealer or leasing agent on information provided by the commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 10, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 11, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 25(4), eff. June 14, 2013.

Sec. 386.162. EXPIRATION. This subchapter expires August 31, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 12, eff. June 14, 2013.

**SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM**

Sec. 386.181. DEFINITION; RULES. (a) In this subchapter, "drayage truck" means a truck that transports a load to or from a seaport or rail yard.

(b) The commission may include more specific definitions in the rules or guidelines developed to implement the program established by this subchapter in order to reduce emissions in and around seaports in a nonattainment area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.

Sec. 386.182. COMMISSION DUTIES. (a) The commission shall develop a purchase incentive program to encourage owners to replace drayage trucks with pre-2007 model year engines with newer drayage trucks and shall adopt guidelines necessary to implement the program.

(b) The commission by rule shall establish criteria for the models of drayage trucks that are eligible for inclusion in an incentive program under this subchapter. The guidelines must provide that a drayage truck owner is not eligible for an incentive payment under this subchapter unless the truck being replaced contains a pre-2007 model year engine and the replacement truck's engine is from model year 2010 or later as determined by the commission and that the truck operates at a seaport or rail yard.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.

Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck that under the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the truck in this state;

(B) operate the truck in and within a maximum distance established by the commission of a seaport or rail yard in a nonattainment area of this state for not less than 50 percent of the

vehicle's annual mileage or hours of operation, as determined by the commission; and

(C) permanently remove a pre-2007 drayage truck containing a pre-2007 engine owned by the person from operation in a nonattainment area of this state by destroying the engine and scrapping the truck after the purchase of the new truck in accordance with guidelines established by the commission.

(b) To receive money under an incentive program provided by this subchapter, the purchaser of a drayage truck eligible for inclusion in the program must apply for the incentive in the manner provided by law, rule, or guideline of the commission.

(c) Not more than one incentive may be provided for each drayage truck purchased.

(d) An incentive provided under this subchapter may be used to fund not more than 80 percent of the purchase price of the drayage truck.

(e) The commission shall establish procedures to verify that a person who receives an incentive:

(1) has operated in a seaport or rail yard and owned or leased the drayage truck to be replaced for at least two years prior to receiving the grant; and

(2) permanently destroys the engine and scraps the drayage truck that contained the pre-2007 engine owned or leased by the person, in accordance with guidelines established by the commission, after the purchase of the new truck.

(f) The commission may modify this program to improve its effectiveness or further the goals of Subchapter B.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. [1727](#)), Sec. 13, eff. June 14, 2013.

#### **SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER ENERGY EFFICIENCY PROGRAMS**

Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from programs implemented by the state energy conservation office and from

programs implemented under Section 39.905, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 15, eff. June 14, 2013.

#### **SUBCHAPTER F. TEXAS EMISSIONS REDUCTION PLAN FUND**

Sec. 386.251. FUND. (a) The Texas emissions reduction plan fund is an account in the state treasury.

(b) The fund is administered by the commission for the benefit of the plan established under this chapter. The fund is exempt from the application of Section 403.095, Government Code. Interest earned on the fund shall be credited to the fund.

(c) The fund consists of:

(1) the amount of money deposited to the credit of the fund under:

(A) Section 386.056;

(B) Sections 151.0515 and 152.0215, Tax Code; and

(C) Sections 501.138, 502.358, and 548.5055,

Transportation Code; and

(2) grant money recaptured under Section 386.111(d) and Chapter 391.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.08, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 244, eff. January 1, 2012.

Sec. 386.252. USE OF FUND. (a) Money in the fund may be used only to implement and administer programs established under the plan.

Money appropriated to the commission to be used for the programs under Section 386.051(b) shall be allocated as follows:

- (1) not more than four percent may be used for the clean school bus program under Chapter 390;
- (2) not more than three percent may be used for the new technology implementation grant program under Chapter 391, from which at least \$1 million will be set aside for electricity storage projects related to renewable energy;
- (3) five percent shall be used for the clean fleet program under Chapter 392;
- (4) not more than \$3 million may be used by the commission to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;
- (5) not less than 16 percent shall be used for the Texas natural gas vehicle grant program under Chapter 394;
- (6) not more than five percent may be used to provide grants for natural gas fueling stations under the clean transportation triangle program under Section 394.010;
- (7) not more than five percent may be used for the Texas alternative fueling facilities program under Chapter 393;
- (8) a specified amount may be used each year to support research related to air quality as provided by Chapter 387;
- (9) not more than \$200,000 may be used for a health effects study;
- (10) \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties;
- (11) at least \$4 million and up to four percent to a maximum of \$7 million, whichever is greater, is allocated to the commission for administrative costs;
- (12) at least two percent and up to five percent of the fund is to be used by the commission for the drayage truck incentive program established under Subchapter D-1;
- (13) not more than five percent may be used for the light-

duty motor vehicle purchase or lease incentive program established under Subchapter D;

(14) not more than \$216,000 is allocated to the commission to contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan;

(15) 1.5 percent of the money in the fund is allocated for administrative costs incurred by the laboratory; and

(16) the balance is to be used by the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

(b) The commission may allocate unexpended money designated for the clean fleet program under Chapter 392 to other programs described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.

(c) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program under Chapter 393 to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.

(d) The commission may reallocate money designated for the Texas natural gas vehicle grant program under Chapter 394 to other programs described under Subsection (a) if:

(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for that program will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program would resolve the noncompliance.

(e) Under Subsection (d), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

(e-1) Money allocated under Subsection (a) to a particular program may be used for another program under the plan as determined by the commission.

(f) Money in the fund may be used by the commission for programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may be

appropriated for those programs.

(g) If the legislature does not specify amounts or percentages from the total appropriation to the commission to be allocated under Subsection (a) or (f), the commission shall determine the amounts of the total appropriation to be allocated under each of those subsections, such that the total appropriation is expended while maximizing emissions reductions.

(h) Subject to the limitations outlined in this section and any additional limitations placed on the use of the appropriated funds, money allocated under this section to a particular program may be used for another program under the plan as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. [3469](#)), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. [2129](#)), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 12, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. [12](#)), Sec. 2.09, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. [1796](#)), Sec. 23, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1232 (S.B. [1759](#)), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. [527](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. [20](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. [20](#)), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. [385](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. [385](#)), Sec. 2, eff.



September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.003(a), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 17, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 18, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 19, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(7), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(8), eff. June 14, 2013.

#### **CHAPTER 387. AIR QUALITY RESEARCH SUPPORT PROGRAM**

Sec. 387.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Program" means the air quality research support program established under this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 4, eff. Oct. 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 5, eff. September 1, 2011.

Sec. 387.002. AIR QUALITY RESEARCH SUPPORT PROGRAM. (a) The commission shall contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality.

(b) The board of directors of a nonprofit organization establishing and administering the research program related to air quality under this chapter may not have more than 11 members, must include two persons with relevant scientific expertise to be

nominated by the commission, and may not include more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas. The two persons with relevant scientific expertise to be nominated by the commission may be employees or officers of the commission, provided that they do not participate in funding decisions affecting the granting of funds by the commission to a nonprofit organization on whose board they serve.

(c) The commission shall provide oversight as appropriate for grants provided under the program established under this chapter.

(d) A nonprofit organization or institution of higher education shall submit to the commission for approval a budget for the disposition of funds granted under the program established under this chapter.

(e) A nonprofit organization or institution of higher education shall be reimbursed for costs incurred in establishing and administering the research program related to air quality under this chapter. Reimbursable administrative costs of a nonprofit organization or institution of higher education may not exceed 10 percent of the program budget.

(f) A nonprofit organization that receives grants from the commission under this chapter is subject to Chapters 551 and 552, Government Code.

Redesignated and amended from Health and Safety Code, Section 387.010 by Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 6, eff. September 1, 2011.

Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The environmental research fund is an account in the general revenue fund. The fund consists of money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature.

(b) Money in the environmental research fund may be used only by the commission for operations and projects under this chapter.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Interest earned on the fund shall be credited to the fund.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1,

2001. Amended by Acts 2003, 78th Leg., ch. 29, Sec. 4, eff. May 14, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 11, eff. Oct. 20, 2003.

Sec. 387.009. **ADVISORY COMMITTEES.** The commission may appoint advisory committees as necessary or desirable to assist the commission in performing its duties under this chapter. An advisory committee may include representatives of industry, environmental groups, consumer groups, local governments, agriculture, the commission, the General Land Office, and the Railroad Commission of Texas. Any senator or representative desiring to do so may participate on any advisory committee appointed under this section. Members of an advisory committee are not entitled to compensation.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 12, eff. Oct. 20, 2003.

#### **CHAPTER 388. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS**

Sec. 388.001. **LEGISLATIVE FINDINGS.** (a) The legislature finds that an effective building energy code is essential to:

- (1) reducing the air pollutant emissions that are affecting the health of residents of this state;
- (2) moderating future peak electric power demand;
- (3) assuring the reliability of the electrical grid; and
- (4) controlling energy costs for residents and businesses in this state.

(b) The legislature further finds that this state has a number of unique climate types, all of which require more energy for cooling than for heating, and that there are many cost-effective measures that can reduce peak energy use and reduce cooling and other energy costs in buildings.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 388.002. **DEFINITIONS.** In this chapter:

- (1) "Affected county" has the meaning assigned by Section

386.001.

(2) "Building" has the meaning assigned by the International Building Code.

(3) "Code official" means an individual employed by a local jurisdiction to review construction plans and other documents, inspect construction, or administer and enforce building standards under this chapter.

(4) "Code-certified inspector" means an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International to have met minimum standards for interpretation and enforcement of requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings as adopted by the International Code Council.

(7) "International Energy Conservation Code" means the International Energy Conservation Code as adopted by the International Code Council.

(8) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(9) "Local jurisdiction" means the authority responsible for implementation and enforcement of local building codes.

(10) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(11) "Nonattainment area" has the meaning assigned by Section 386.001.

(12) "Single-family residential" means having the character of a detached one- or two-family dwelling or a multiple single-family dwelling not more than three stories high with separate means of egress, including the accessory structures of the dwelling.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 388.003. ADOPTION OF BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS. (a) To achieve energy conservation in single-family residential construction, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, is adopted as the energy code in this state for single-family residential construction.

(b) To achieve energy conservation in all other residential, commercial, and industrial construction, the International Energy Conservation Code as it existed on May 1, 2001, is adopted as the energy code for use in this state for all other residential, commercial, and industrial construction.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 262  
(S.B. 12), Sec. 3.01

(b-1) If the State Energy Conservation Office determines, based on written recommendations from the laboratory, that the latest published edition of the International Residential Code energy efficiency provisions or the latest published edition of the International Energy Conservation Code will result in residential or commercial energy efficiency and air quality that is equivalent to or better than the energy efficiency and air quality achievable under the editions adopted under Subsection (a) or (b), the office may by rule adopt the equivalent or more stringent editions and substitute them for the energy codes described by Subsection (a) or (b). The rule, if adopted, shall establish an effective date for the new energy codes but not earlier than nine months after the date of adoption. The laboratory shall make its recommendations not later than six months after publication of new editions at the end of each three-year code development cycle of the International Residential Code and the International Energy Conservation Code.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 939  
(H.B. 3693), Sec. 11

(b-1) If the State Energy Conservation Office determines, based on written recommendations from the laboratory, that the energy efficiency provisions of the latest published editions of the International Residential Code or the International Energy Conservation Code for residential or commercial energy efficiency and air quality are equivalent to or more stringent than the provisions of editions adopted under Subsection (a) or (b), the office by rule may adopt and substitute in the energy code the equivalent or more

stringent editions for of the initial editions described by Subsection (a) or (b). If the State Energy Conservation Office adopts the latest published editions of the International Residential Code or the International Energy Conservation Code into the energy code, the office shall establish an effective date for the new editions that is not earlier than nine months after the date of adoption. The laboratory shall submit recommendations concerning the latest published editions of the International Residential Code or the International Energy Conservation Code not later than six months after publication of new editions.

(b-2) The State Energy Conservation Office by rule shall establish a procedure for persons who have an interest in the adoption of energy codes under Subsection (b-1) to have an opportunity to comment on the codes under consideration. The office shall consider persons who have an interest in adoption of those codes to include:

(1) commercial and residential builders, architects, and engineers;

(2) municipal, county, and other local government authorities; and

(3) environmental groups.

(b-3) In developing written recommendations under Subsection (b-1), the laboratory shall consider the comments submitted under Subsection (b-2).

(c) A municipality shall establish procedures:

(1) for the administration and enforcement of the codes;

(2) to ensure that code-certified inspectors shall perform inspections and enforce the code in the inspectors' jurisdictions; and

(3) to track and report to the state energy conservation office on implementation of the codes.

(d) A municipality or county may establish procedures to adopt local amendments to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

(e) Local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy efficiency chapter of the International Residential Code or International Energy Conservation Code. Local amendments must comply with the National Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as amended.

The laboratory, at the request of a municipality or county, shall determine the relative impact of proposed local amendments to an energy code, including whether proposed amendments are substantially equal to or less stringent than the unamended code. For the purpose of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a municipality, the laboratory may recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code. The laboratory shall:

(1) report its findings to the council, county, or municipality, including an estimate of any energy savings potential above the unamended code from local amendments; and

(2) annually submit a report to the commission:

(A) identifying the municipalities and counties whose codes are more stringent than the unamended code, and whose codes are equally stringent or less stringent than the unamended code; and

(B) quantifying energy savings and emissions reductions from this program for consideration in the state implementation plan for emissions reduction credit.

(f) Each municipality, and each county that has established procedures under Subsection (d), shall periodically review and consider revisions made by the International Code Council to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code adopted after May 1, 2001.

(g) The laboratory shall have the authority to set and collect fees to perform certain tasks in support of the requirements in Sections 388.004, 388.007, and 388.008.

(h) Within the boundaries of an airport operated by a joint board created under Subchapter D, Chapter 22, Transportation Code, the constituent agencies of which are populous home-rule municipalities, the powers of a municipality under this section are exclusively the powers of the joint board.

(i) A building certified by a national, state, or local accredited energy efficiency program and determined by the laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the municipality, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be

considered in compliance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.013, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 3, eff. September 1, 2011.

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

(b) A builder shall retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. The builder on receipt of any compliance documentation shall provide a copy to the owner of the building.

(c) A single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, shall be



considered in compliance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 16, eff. June 20, 2003.

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION AND CERTAIN GOVERNMENTAL ENTITIES. (a) In this section:

(1) "Institution of higher education" includes an institution of higher education as defined by Section 61.003, Education Code, and a private institution of higher education that receives funding from the state.

(2) "Political subdivision" means:

(A) an affected county; or

(B) any political subdivision in a nonattainment area or in an affected county other than:

(i) a school district; or

(ii) a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than \$200,000 in the previous fiscal year of the district.

(3) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state.

(b) Each political subdivision, institution of higher education, or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the entity.

(c) Each political subdivision, institution of higher education, or state agency shall establish a goal to reduce the electric consumption by the entity by at least five percent each state fiscal year for 10 years, beginning September 1, 2011.

(d) A political subdivision, institution of higher education, or state agency that does not attain the goals established under Subsection (c) must include in the report required by Subsection (e)

justification that the entity has already implemented all available cost-effective measures. An entity that submits a report under this subsection indicating that the entity has reviewed its available options, has determined that no additional measures are cost-effective, and has already implemented all available cost-effective measures is exempt from the annual reporting requirement of Subsection (e) if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to the State Energy Conservation Office.

(e) A political subdivision, institution of higher education, or state agency annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the entity's goal, the entity's efforts to meet the goal, and progress the entity has made under this section. The State Energy Conservation Office shall provide assistance and information to the entity to help the entity meet goals established under this section. The office must develop and make available a standardized form for reporting purposes.

(f) This section does not apply to a state agency or an institution of higher education that the State Energy Conservation Office determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each year to the governor, the Legislative Budget Board, and the State Energy Conservation Office.

(g) Except as provided by Subsection (h), this section does not apply to the electricity consumption of a district as defined by Section 36.001 or 49.001, Water Code, that relates to the operation and maintenance of facilities or improvements for:

- (1) wastewater collection and treatment;
- (2) water supply and distribution; or
- (3) storm water diversion, detention, or pumping.

(h) At least once every five years, a political subdivision that is a district as defined by Section 36.001 or 49.001, Water Code, shall for district facilities described by Subsection (g):

- (1) evaluate the consumption of electricity;
- (2) establish goals to reduce the consumption of

electricity; and

(3) identify and implement cost-effective energy efficiency measures to reduce the consumption of electricity.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 12, eff. September 1, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.014, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.12, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 1, eff. September 1, 2013.

Sec. 388.006. STATE ENERGY CONSERVATION OFFICE EVALUATION. The State Energy Conservation Office annually shall provide the commission and the laboratory with an evaluation of the effectiveness of state and political subdivision energy efficiency programs, including programs under this chapter. The laboratory shall calculate, based on the evaluation and the forms submitted to the office, the amount of energy savings and estimated reduction in pollution achieved as a result of the implementation of programs. The laboratory shall share the information with the commission, the United States Environmental Protection Agency, and the Electric Reliability Council of Texas to help with long-term forecasting and in estimating pollution reduction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 2, eff. September 1, 2011.

Sec. 388.007. DISTRIBUTION OF INFORMATION AND TECHNICAL ASSISTANCE. (a) The laboratory shall make available to builders, designers, engineers, and architects code implementation materials that explain the requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code and that describe methods of compliance acceptable to code officials.

(b) The materials may include software tools, simplified prescriptive options, and other materials as appropriate. The simplified materials may be designed for projects in which a design professional is not involved.

(c) The laboratory may provide local jurisdictions with technical assistance concerning implementation and enforcement of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code, including local amendments to those codes.

(d) The laboratory may conduct outreach to the real estate industry, including real estate agents, home builders, remodelers, appraisers, and financial institutions, on the value of energy code compliance and verified, above-code, high-performance construction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 4, eff. September 1, 2011.

Sec. 388.008. DEVELOPMENT OF HOME ENERGY RATINGS. (a) The laboratory shall develop a standardized report format to be used by providers of home energy ratings. The laboratory may develop different report formats for rating newly constructed residences from those for existing residences. The form must be designed to give potential buyers information on a structure's energy performance, including:

- (1) insulation;
- (2) types of windows;
- (3) heating and cooling equipment;

(4) water heating equipment;  
(5) additional energy conserving features, if any;  
(6) results of performance measurements of building tightness and forced air distribution; and  
(7) an overall rating of probable energy efficiency relative to the minimum requirements of the International Energy Conservation Code or the energy efficiency chapter of the International Residential Code, as appropriate.

(b) The laboratory shall establish a public information program to inform homeowners, sellers, buyers, and others regarding home energy ratings.

(c) The laboratory may cooperate with an industry organization or trade association to:

(1) develop guidelines for home energy ratings;  
(2) provide training for individuals performing home energy ratings and providers of home energy ratings; and  
(3) provide a registry of completed ratings for newly constructed residences and residential improvement projects for the purpose of computing the energy savings and emissions reductions benefits of the home energy ratings program.

(d) The laboratory shall include information on the benefits attained from this program in an annual report to the commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. [3693](#)), Sec. 13, eff. September 1, 2007.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. The commission shall conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 17, eff. June 20, 2003.

Sec. 388.011. CERTIFICATION OF MUNICIPAL BUILDING INSPECTORS. The laboratory shall develop and administer statewide a training program for municipal building inspectors seeking to become code-certified inspectors. The laboratory shall also work with national code organizations to assist participants in the certification program. The laboratory may collect reasonable fees from participants in the program to pay the costs of administering the program.

Acts 2003, 78th Leg., ch. 1148, Sec. 1.

Renumbered from Health and Safety Code, Section 388.009 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(50), eff. September 1, 2005.

Sec. 388.012. DEVELOPMENT OF ALTERNATIVE ENERGY-SAVING METHODS. The laboratory shall develop at least three alternative methods for achieving a 15 percent greater potential energy savings in residential, commercial, and industrial construction than the potential energy savings of construction that is in minimum compliance with Section 388.003. The alternative methods:

(1) may include both prescriptive and performance-based approaches, such as the approach of the United States Environmental Protection Agency's Energy Star qualified new home labeling program; and

(2) must include an estimate of:

(A) the implementation costs and energy savings to consumers; and

(B) the related emissions reductions.

Added by Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 4, eff. September 1, 2005.

#### **CHAPTER 389. EMISSIONS REDUCTION RECOGNITION EFFORTS**

Sec. 389.001. DEFINITION. In this chapter, "commission" means the Texas Natural Resource Conservation Commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 389.002. USE OF CERTAIN INFORMATION FOR FEDERAL RECOGNITION OF EMISSIONS REDUCTIONS. The commission, using information derived from the reports to the commission under Sections 386.205, 388.003(e), and 388.006, shall take all appropriate and necessary actions so that emissions reductions achieved by means of activities under Chapters 386 and 388 are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS AND ASSOCIATED CREDITS. (a) The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives, including renewable energy initiatives, and the credits associated with those reductions.

(b) The laboratory shall assist the commission and affected political subdivisions in quantifying, as part of the state implementation plan, credits for emissions reductions attributable to energy efficiency programs, including renewable energy programs.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 18, eff. June 20, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. [2481](#)), Sec. 16, eff. September 1, 2005.

**For expiration of this chapter, see Section 390.006.**

#### **CHAPTER 390. CLEAN SCHOOL BUS PROGRAM**

Sec. 390.001. DEFINITIONS. In this chapter:

(1) "Diesel exhaust" means one or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) "Incremental cost" has the meaning assigned by Section 386.001.

(3) "Program" means the clean school bus program established under this chapter.

(4) "Qualifying fuel" includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(5) "Retrofit" has the meaning assigned by Section 386.101.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.002. PROGRAM. (a) The commission shall establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of diesel exhaust.

(b) Projects that may be considered for a grant under the program include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.003. APPLICATION FOR GRANT. (a) A school district in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or



a private nonprofit organization to also apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.004. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for setting priorities for projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.005. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.006. EXPIRATION. This chapter expires August 31, 2019.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 17, eff. September 1, 2009.

**For expiration of this chapter, see Section 391.304.**

**CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND STATIONARY SOURCES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "Best available control technology" has the meaning assigned by Section 169 of the federal Clean Air Act (42 U.S.C. Section 7479(3)).

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Facility" has the meaning assigned by Section 382.003.

(4) "Incremental cost" has the meaning assigned by Section 386.001.

(5) "New technology" means emissions control technology that results in emissions reductions that exceed state or federal requirements in effect at the time of submission of a new technology implementation grant application.

(6) "Stationary source" has the meaning assigned by Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602(z)).

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. The commission may establish a minimum capital expenditure threshold for projects under Subsection (b)(2). Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

(b) Projects that may be considered for a grant under the program include:

(1) advanced clean energy projects, as defined by Section 382.003;

(2) new technology projects that reduce emissions of regulated pollutants from point sources; and

(3) electricity storage projects related to renewable energy, including projects to store electricity produced from wind and solar generation that provide efficient means of making the stored energy available during periods of peak energy use.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 20, eff. June 14, 2013.

Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) The guidelines must include:

(1) protocols to compute projected emissions reductions and project cost-effectiveness; and

(2) safeguards to ensure that the projects funded result in emissions reductions not otherwise required by state or federal law.

(c) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the program to achieve the program goals.

(d) The commission may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(e) Except as provided by Subsection (d), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS IN CERTAIN NONATTAINMENT AREAS. A project funded under this chapter must comply with Sections 386.055 and 386.056, as applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

#### **SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW**

Sec. 391.101. APPLICATION FOR GRANT. (a) The owner of a facility located in this state may apply for a grant under the program established under Section 391.002. To improve the ability of the program to achieve the program goals, the commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain information required by the commission, including:

- (1) a detailed description of the proposed project;
- (2) information necessary for the commission to determine whether the project meets the commission's eligibility requirements, including a statement of the amounts of any other public financial assistance the project will receive; and
- (3) other information the commission may require.

(c) An application for a grant under this chapter must contain a plan for implementation of a program that will provide project information and education to the public in the areas subject to public notice under federal and state permitting requirements for the proposed project until completion of the permitting process. The plan must provide for a publicly accessible informational Internet website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this chapter according to dates specified in a request for grant applications. If the commission determines that an application is incomplete, the commission shall notify the applicant and provide an explanation of the information missing from the application. The commission shall evaluate the completed application according to the guidelines and criteria adopted under Section

391.003.

(b) To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny a grant application for a project that does not meet the applicable criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter or the goals of this chapter.

(d) Subject to the availability of funding, the commission shall award a grant under this chapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described by the recipient's grant application. Subject to Section 391.204, the contract must incorporate provisions for recapturing grant money for noncompliance with grant requirements. Grant money recaptured under the contract provisions shall be deposited in the Texas emissions reduction plan fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

(f) In coordinating interagency application review procedures, the commission shall:

(1) solicit review and comments from:

(A) the comptroller to assess:

- (i) the financial stability of the applicant;
- (ii) the economic benefits and job creation

potential associated with the project; and

- (iii) any other information related to the duties

of that office;

(B) the Public Utility Commission of Texas to assess:

- (i) the reliability of the proposed technology;
- (ii) the feasibility and cost-effectiveness of

electric transmission associated with the project; and

- (iii) any other information related to the duties

of that agency; and

(C) the Railroad Commission of Texas to assess:

- (i) the availability and cost of the fuel involved

with the project; and

- (ii) any other information related to the duties of

that agency;

(2) consider the comments received under Subdivision (1) in the commission's grant award decision process; and

(3) as part of the report required by Section 391.104, justify awards made to projects that have been negatively reviewed by agencies under Subdivision (1).

(g) The commission may solicit review and comments from other state agencies or other entities with subject matter expertise applicable to the review of a grant application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL REQUIRED. (a) An application for a new technology implementation grant under this chapter must show reasonable evidence that the proposed technology is capable of providing a significant reduction in emissions.

(b) The commission shall consider specifically, for each proposed new technology implementation grant application:

(1) the projected potential for reduced emissions and the cost-effectiveness of the new technology;

(2) the potential for the new technology to contribute significantly to air quality goals; and

(3) the strength of the implementation plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.104. REPORTING REQUIREMENTS. The commission annually shall prepare a report that summarizes the applications received and grants awarded in the preceding year. Preparation of the report must include the participation of the state agencies involved in the review of applications under Section 391.102.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

#### **SUBCHAPTER C. PROJECT REQUIREMENTS**

Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project must meet the requirements of this section to be eligible for a grant under the program established under Section 391.002.

(c) Each proposed project must meet the cost-effectiveness requirements established by the commission.

(d) A new technology implementation project must document, in a manner acceptable to the commission, an achieved reduction from the baseline emissions adopted by the commission for the relevant facility or stationary source. After studying available emissions reduction technologies, the commission may impose a required minimum percentage reduction of emissions to improve the ability of the program to achieve the program goals.

(e) If a baseline emissions standard does not exist for a facility, the commission, for purposes of this subchapter, shall adopt an appropriate baseline emissions level for comparison purposes.

(f) Planned water usage for proposed projects must be consistent with the state water plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.202. EVALUATING COST-EFFECTIVENESS. The commission shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with accepted methods.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.203. DETERMINATION OF GRANT AMOUNT. (a) The commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed project by the value of any existing financial incentive that

directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.204. COST SHARING; RECAPTURING GRANT. (a) The commission shall require an applicant to bear at least 50 percent of the costs of implementing a project funded under this chapter.

(b) The commission may not require repayment of grant money, except that the commission must require provisions for recapturing grant money for noncompliance with grant requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.205. PREFERENCES. (a) Except as provided by Subsection (c), in awarding grants under this chapter the commission shall give preference to projects that:

- (1) use natural resources originating or produced in this state;
- (2) contain an energy efficiency component; or
- (3) include the use of solar, wind, or other renewable energy sources.

(b) Projects that include more than one of the criteria described by Subsection (a) shall be given a greater preference in the award of grants under this chapter.

(c) The commission may give preference under Subsection (a) only if the cost-effectiveness and emission performance of the project are comparable to those of a project not claiming a preference described by that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

#### **SUBCHAPTER D. FUNDING; EXPIRATION**

Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a



grant under this chapter must use the grant to pay the incremental costs of the purchase and installation of the project for which the grant is made, which may include reasonable and necessary expenses for the labor needed to install emissions-reducing equipment. The recipient may not use the grant for the costs of operating and maintaining the emissions-reducing equipment.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a) The comptroller annually shall conduct a review of each recipient of a new technology implementation grant under this chapter to ensure that the recipient's use of the grant complies with state law and the terms of the award.

(b) To assist with a review under this section, the commission shall provide the comptroller with all monitoring reports received from grant recipients and any other documentation requested by the comptroller.

(c) On a finding of any misuse of grant money or other noncompliance with grant requirements, the comptroller shall provide a report to the commission with recommendations for subsequent action, including the recapture of money misused.

(d) A finding of any misuse of grant money by a recipient of a grant under this chapter results in a debt owed to the state, and the comptroller may withhold warrants and electronic funds transfers to the recipient in accordance with Section 403.055, Government Code.

(e) The comptroller may contract with another state agency, an institution of higher education, or a private entity to conduct a review under this section or to assist the comptroller in conducting any part of the review.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.303. TIME OF USE OF GRANT FUNDING. Money appropriated for grants to be made by the commission under this chapter for a fiscal year may be distributed in subsequent fiscal years if the

grant has been awarded and treated as a binding encumbrance by the commission before the end of the appropriation year of the money appropriated for grant purposes. Distribution of the grant money is subject to Section 403.071, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.304. EXPIRATION. This chapter expires August 31, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

#### **CHAPTER 392. TEXAS CLEAN FLEET PROGRAM**

Sec. 392.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, including electricity, compressed natural gas, liquified natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Golf cart" has the meaning assigned by Section 502.001, Transportation Code.

(4) "Hybrid vehicle" means a vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(5) "Incremental cost" has the meaning assigned by Section 386.001.

(6) "Light-duty motor vehicle" has the meaning assigned by Section 386.151.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Neighborhood electric vehicle" means a motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 C.F.R. Section 571.500);

(B) is a slow-moving vehicle, as defined by Section 547.001, Transportation Code, that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) "Program" means the Texas clean fleet program established under this chapter.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.002. PROGRAM. (a) The commission shall establish and administer the Texas clean fleet program to encourage a person that has a fleet of diesel-powered vehicles to replace them with alternative fuel or hybrid vehicles. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects for fleet owners.

(b) An entity that places 20 or more qualifying vehicles in service for use entirely in this state during a calendar year is eligible to participate in the program.

(c) Notwithstanding Subsection (b), an entity that submits a grant application for 20 or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the calendar year the entity purchases a new on-road vehicle that:

- (1) is certified to current federal emissions standards;
  - (2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and
  - (3) is a hybrid vehicle or fueled by an alternative fuel.
- (b) A vehicle is not a qualifying vehicle if the vehicle:
- (1) is a neighborhood electric vehicle;
  - (2) has been used as a qualifying vehicle to qualify for a grant under this chapter for a previous reporting period or by another entity; or
  - (3) has qualified for a similar grant or tax credit in another jurisdiction.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.004. APPLICATION FOR GRANT. (a) An entity operating in this state that operates a fleet of at least 75 vehicles may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(d) The commission shall minimize, to the maximum extent possible, the amount of paperwork required for an application. An applicant may be required to submit a photograph or other documentation of a vehicle identification number, registration information, inspection information, tire condition, or engine block identification only if the photograph or documentation is requested by the commission after the commission has decided to award a grant to the applicant under this chapter.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.005. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, a project must:

(1) result in a reduction in emissions of nitrogen oxides or other pollutants, as established by the commission, of at least 25 percent, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) replace a vehicle that:

(A) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(B) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(C) satisfies any minimum percentage of annual usage requirements established by the commission; and

(D) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, registered, and operated in the state by the grant recipient until the earlier of the fifth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the state.

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the contract requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A vehicle or engine replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method of complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road vehicles being replaced. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission.

(h) Mileage requirements established by the commission under Subsection (b)(2)(B) may differ by vehicle weight categories and type of use.

(i) The executive director shall waive the requirements of Subsection (b)(2)(A) on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the initial cost of the alternative fuel vehicle and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.007. AMOUNT OF GRANT. (a) The amount the commission shall award for each vehicle being replaced is up to 80 percent, as

determined by the commission, of the total cost for replacement of a heavy-duty or light-duty diesel engine.

(b) The commission may revise the standards for determining grant amounts, as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 21, eff. June 14, 2013.

Sec. 392.008. EXPIRATION. This chapter expires August 31, 2017.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

**For expiration of this chapter, see Section 393.007.**

**CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM**

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquified natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 393.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in nonattainment

areas. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs, reconstructs, or acquires an alternative fueling facility is eligible to participate in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 393.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs, reconstructs, or acquires a facility to store, compress, or dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing facilities eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, the entity receiving the grant must agree to make the alternative fueling facility available to persons not associated with the entity at times designated by the grant agreement.

(c) A recipient of a grant under this chapter is not eligible to receive a second grant under this chapter for the same facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.



Sec. 393.005. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant only to pay the costs of the facility for which the grant is made. The recipient may not use the grant to pay the recipient's administrative expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 393.006. AMOUNT OF GRANT. For each eligible facility for which a recipient is awarded a grant under the program, the commission shall award the grant in an amount equal to the lesser of:

- (1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission to construct, reconstruct, or acquire the facility; or
- (2) \$600,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 24, eff. June 14, 2013.

Sec. 393.007. EXPIRATION. This chapter expires August 31, 2018.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

**For expiration of this chapter, see Section 394.012.**

**CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM**

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle with:

(A) a gross vehicle weight rating of more than 8,500 pounds; and

(B) an engine certified to the United States Environmental Protection Agency's standards for heavy-duty engines.

(5) "Incremental cost" means the difference between the manufacturer's suggested retail price of a baseline vehicle, the documented dealer price of a baseline vehicle, cost to lease or otherwise commercially finance a baseline vehicle, cost to repower with a baseline engine, or other appropriate baseline cost established by the commission, and the actual cost of the natural gas vehicle purchase, lease, or other commercial financing, or repower.

(6) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Natural gas vehicle" means a motor vehicle that receives not less than 75 percent of its power from compressed or liquefied natural gas.

(9) "Program" means the Texas natural gas vehicle grant program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.002. PROGRAM. The commission shall establish and administer the Texas natural gas vehicle grant program to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Under the program, the commission shall provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of repowering or replacing the heavy-duty or medium-duty motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the calendar year the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to current federal emissions standards;

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; and

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions standards; and

(B) is:

(i) a heavy-duty engine that is certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) certified to meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle.

(b) A heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle:

(1) has been awarded a grant under this chapter for a previous reporting period; or

(2) has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle may apply for and receive a grant under this chapter.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible, documentation required for an application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate after consultation with the advisory board.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two

years of remaining useful life, as determined in accordance with criteria established by the commission; or

(B) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in:

(1) the counties any part of which are included in the area described by Section 394.010(a); or

(2) counties designated as nonattainment areas within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A heavy-duty or medium-duty motor vehicle replaced under this program must be rendered permanently inoperable by crushing the

vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall establish criteria for ensuring the permanent destruction of the engine or vehicle. The commission shall enforce the destruction requirements.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced by using the emission certification for the engine or vehicle being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission after consultation with the advisory board.

(h) Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle weight categories and type of use.

(i) The executive director shall waive the requirements of Subsection (b)(2)(A)(i) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement for which the grant is made, which may include the initial cost of the natural gas vehicle or natural gas engine and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount up to 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(b) Not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded.

(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 22, eff. June 14, 2013.

Sec. 394.008. GRANT PROCEDURES. (a) The commission shall

adopt procedures for:

(1) awarding grants under this chapter in the form of rebates; and

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers.

(b) Procedures adopted under this section must:

(1) provide for the commission to compile and regularly update a listing of preapproved natural gas vehicles:

(A) powered by natural gas engines certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(B) certified to the United States Environmental Protection Agency's light-duty Bin 5 standard or better;

(2) if a federal standard for the calculation of emissions reductions exists, provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized rebate amount for each qualifying vehicle under Section 394.007;

(4) allow for processing rebates on an ongoing first-come, first-served basis;

(5) provide for contracts between the commission and participating dealers under Section 394.009;

(6) allow grant recipients to assign their grant funds to participating dealers to offset the purchase or lease price;

(7) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(8) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(9) provide for application submission and application status checks to be made over the Internet; and

(10) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting requirements.

(c) The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.



(d) Grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.009. PARTICIPATING DEALERS. (a) In this section, "participating dealer" means a person who:

(1) sells, leases, or otherwise commercially finances on-road heavy-duty or medium-duty natural gas vehicles or heavy-duty or medium-duty natural gas engines; and

(2) has satisfied all requirements established by the commission for participation in the program as a dealer.

(b) A participating dealer must agree to the terms and conditions of a standardized contract developed by the commission.

(c) A participating dealer shall:

(1) provide information regarding natural gas vehicle grants to fleet operators;

(2) assist an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer with the completion of the application; and

(3) submit completed applications and documentation to the commission on behalf of an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer.

(d) A participating dealer may not approve a grant.

(e) The commission shall:

(1) maintain and make available to the public online a list of all qualified dealers; and

(2) establish requirements for participation in the program by sellers of on-road heavy-duty or medium-duty natural gas vehicles and heavy-duty or medium-duty natural gas engines.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To ensure that natural gas vehicles purchased, leased, or otherwise

commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, the commission shall award grants to support the development of a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth, and in nonattainment areas and affected counties of the state. In awarding the grants, the commission shall provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas, and in nonattainment areas and affected counties of the state, to enable a natural gas vehicle to travel in those areas relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by the commission; and

(4) a listing, to be maintained by the commission and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) The commission may not award more than one grant for each station.

(c) Grants awarded under this section may not exceed:

(1) \$400,000 for a compressed natural gas station;

(2) \$400,000 for a liquefied natural gas station; or

(3) \$600,000 for a station providing both liquefied and compressed natural gas.

(d) Stations funded by grants under this section must be publicly accessible. The commission shall give preference to:

(1) stations providing both liquefied natural gas and compressed natural gas at a single location;

(2) stations located not more than one mile from an interstate highway system; and

(3) stations located in the triangular area between the Houston, San Antonio, and Dallas-Fort Worth areas.

(e) To meet the goals of this section, the commission may solicit grant applications under this section for a new fueling

station in a specific area or location.

(f) Grants made under this section are not subject to the requirements of Sections 394.002 through 394.008. The commission shall develop an application package and review applications in accordance with Sections 386.110 and 386.111.

(f-1) An application for a grant under this section must include a certification that the applicant complies with laws, rules, guidelines, and requirements applicable to taxation of fuel provided by the applicant at each fueling facility owned or operated by the applicant. The commission may terminate a grant awarded under this section without further obligation to the grant recipient if the commission determines that the recipient did not comply with a law, rule, guideline, or requirement described by this subsection. This subsection does not create a cause of action to contest an application or award of a grant.

(g) The commission, in consultation with the natural gas industry, shall determine the most efficient use of funding for the station grants under this section to maximize the availability of natural gas fueling stations.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 23, eff. June 14, 2013.

Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission may contract with one or more entities for administration of the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.012. EXPIRATION. This chapter expires August 31, 2017.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

**SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS**  
**CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 401.0005. SHORT TITLE. This chapter may be cited as the Texas Radiation Control Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 142, eff. Sept. 1, 1991.

Sec. 401.001. POLICY. In furtherance of the state's responsibility to protect occupational and public health and safety and the environment, it is the policy of the state to institute and maintain:

- (1) a regulatory program for sources of radiation that provides for:
  - (A) compatibility with federal standards and regulatory programs;
  - (B) a single, effective regulatory system in the state;and
  - (C) a regulatory system that is to the degree possible compatible with other states' systems; and
- (2) a program that permits development and use of sources of radiation for peaceful purposes consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.002. PURPOSE. It is the purpose of this chapter to carry out the policies stated in Section 401.001 by providing a program to:

- (1) ensure effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment;
- (2) promote an orderly regulatory pattern in the state, among the states, and between the federal government and the state, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to minimize regulatory duplication;
- (3) establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of

radiation; and

(4) permit maximum use of sources of radiation consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.003. DEFINITIONS. In this chapter, unless otherwise specifically provided:

(1) "Advisory board" means the radiation advisory board.

(2) "Board" means the executive commissioner of the Health and Human Services Commission.

(3) "By-product material" means:

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

(4) "Commission" means the Texas Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state health services.

(6) "Department" means the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission.

(7) "Director" means the director of the radiation control program under the department's jurisdiction.

(8) "Disposal" means, with regard to low-level radioactive waste, isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later. The term does not include emissions and discharges under department rules.

(9) "Electronic product" means a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(10) "Federal commission" means the United States Nuclear Regulatory Commission.

(11) "Perpetual care account" means the radiation and perpetual care account.

(12) "General license" means a license issued under department rules for which an application is not required to be filed to transfer, acquire, own, possess, or use quantities of or devices or equipment that make use of by-product, source, special nuclear, or other radioactive material.

(12-a) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract. The commission may promulgate rules in establishing the criteria for determining gross receipts consistent with the parameters of this definition.

(13) "Local government" means a municipality, county, special district, or other political subdivision of the state.

(14) "Person" includes a legal successor to or representative, agent, or agency of any person but does not include the federal commission and federal agencies the federal commission licenses or exempts.

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(16) "Processing" means the storage, extraction of material, transfer, volume reduction, compaction, or other separation

and preparation of low-level radioactive waste for reuse or disposal, including a treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(17) "Radiation" means one or more of the following:

(A) gamma-rays and X-rays, alpha and beta particles, and other atomic or nuclear particles or rays;

(B) emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(18) "Radioactive material" means a naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(19) "Radioactive substance" includes:

(A) by-product material;

(B) naturally occurring radioactive material waste, excluding oil and gas NORM waste;

(C) radioactive material;

(D) low-level radioactive waste;

(E) source material;

(F) source of radiation; and

(G) special nuclear material.

(20) Repealed by Acts 1999, 76th Leg., ch. 1367, Sec. 39, eff. Sept. 1, 1999.

(21) "Registration" includes:

(A) notice to the department of the service or use of an electronic product; and

(B) registration under Section 401.105.

(22) "Source material" means:

(A) uranium, thorium, or other material that the governor by order declares to be source material after the federal commission has determined the material to be source material; or

(B) ore that contains one or more of the materials listed in Subdivision (A) to the degree of concentration that the governor by order declares to be source material after the federal commission has determined the material to be of a degree of concentration to be source material.

(23) "Source of radiation" means radioactive material or a device or equipment that emits or is capable of producing radiation intentionally or incidentally.

(24) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or the isotope 235, and any other material other than source material that the governor by order declares to be special nuclear material after the federal commission determines the material to be special nuclear material; or

(B) material other than source material that is artificially enriched by any of the materials listed in Subdivision (A).

(25) "Specific license" means a license, issued pursuant to an application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of or devices or equipment using by-product, source, special nuclear, or other radioactive material.

(26) "Naturally occurring radioactive material waste" or "NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt by department rule adopted under Section 401.106.

(27) "Oil and gas NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) is not exempt by department rule adopted under Section 401.106; and

(D) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Section 91.1011 of the Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 1, eff. Aug. 30, 1993; Acts



1995, 74th Leg., ch. 76, Sec. 11.208, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 1, 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 1, eff. June 15, 2007.

Sec. 401.004. LOW-LEVEL RADIOACTIVE WASTE DEFINED. (a) Except as provided by Subsection (b), "low-level radioactive waste" means radioactive material that:

(1) is discarded or unwanted and is not exempt by board rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:

(A) concentration limits established under 10 C.F.R. Section 61.55, or compatible rules established by the department or commission, as applicable; and

(B) disposal criteria established under Title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

(b) "Low-level radioactive waste" does not include:

(1) high-level radioactive waste as defined by 10 C.F.R. Section 60.2;

(2) spent nuclear fuel as defined by 10 C.F.R. Section 72.3;

(3) by-product material described by Section 401.003(3)(B);

(4) naturally occurring radioactive material waste that is not oil and gas NORM waste; or

(5) oil and gas NORM waste.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

Sec. 401.005. CODE OF FEDERAL REGULATIONS REFERENCES. A reference in this chapter to the "C.F.R." or the "Code of Federal

Regulations" means the Code of Federal Regulations as it existed on September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

Sec. 401.011. RADIATION CONTROL AGENCY. (a) The department is the Texas Radiation Control Agency. The department has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b) and Subchapters E, F, G, and K.

(b) The commission has jurisdiction to regulate and license:

(1) the disposal of radioactive substances;

(2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons, except oil and gas NORM;

(3) the recovery or processing of source material in accordance with Subchapter G;

(4) the processing of by-product material as defined by Section 401.003(3)(B); and

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

(C) naturally occurring radioactive material waste.

(c) The department and commission each shall exercise its respective powers and duties under this chapter for the protection of the occupational health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 2, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 2, eff. June 15, 2007.

Sec. 401.012. DESIGNATION OF DIRECTOR. The commissioner shall designate the director of the radiation control program under the department's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.013. DUTIES OF DIRECTOR. The director or the director's designee shall perform the department's functions under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 448, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.014. EMPLOYEES. The department and commission each within its jurisdiction may employ, compensate, and prescribe the powers and duties of persons as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.015. RADIATION ADVISORY BOARD. (a) The radiation advisory board is composed of the following 18 members appointed by the governor:

- (1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;
- (2) one representative from labor;
- (3) one representative from agriculture;
- (4) one representative from the insurance industry;
- (5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Board of Licensure for Professional Medical Physicists;
- (6) one hospital administrator;
- (7) one individual licensed by the Texas State Board of Medical Examiners who specializes in nuclear medicine;
- (8) one individual licensed by the Texas State Board of Medical Examiners who specializes in pathology;
- (9) one individual licensed by the Texas State Board of Medical Examiners who specializes in radiology;
- (10) one representative from the nuclear utility industry;

- (11) one representative from the radioactive waste industry;
  - (12) one representative from the petroleum industry;
  - (13) one health physicist certified by the American Board of Health Physics;
  - (14) one individual licensed by the State Board of Dental Examiners;
  - (15) one representative from the uranium mining industry;
- and
- (16) three representatives of the public.

(b) Advisory board members serve for staggered six-year terms.

(c) A person is not eligible to be appointed as a representative of the public on the advisory board if that person or that person's spouse is:

- (1) engaged in an occupation in the health care field; or
- (2) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory board if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health physics or radiological health; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health physics or radiological health.

(e) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

(f) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 9.01, eff. Sept. 1, 1999.

Sec. 401.0151. TRAINING FOR ADVISORY BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the advisory board;
- (2) the role and functions of the advisory board;
- (3) the rules of the advisory board and applicable rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (4) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (5) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members

of the advisory board, as often as necessary, information regarding the requirements for office under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0153. GROUND FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 401.015(a);
- (2) does not maintain during service on the advisory board the qualifications required by Section 401.015(a);
- (3) is ineligible for membership under Section 401.015(c), (d), or (e);
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an advisory board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the advisory board chairman of the potential ground. The advisory board chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the advisory board chairman, the commissioner shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.016. OFFICERS. (a) The governor shall designate a

member of the advisory board as the advisory board chairman to serve in that capacity at the will of the governor.

(b) The advisory board shall elect from its members a vice-chairman and secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 9.03, eff. Sept. 1, 1999.

Sec. 401.017. SALARY; EXPENSES. A member of the advisory board is not entitled to receive a salary for service on the advisory board but may be reimbursed for actual expenses incurred in attending advisory board meetings or for engaging in authorized advisory board business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.018. MEETINGS. (a) The advisory board shall meet quarterly on dates set by the advisory board.

(b) The advisory board shall hold special meetings that may be called by the advisory board chairman or by five advisory board members.

(c) Advisory board meetings may be held at any designated place in the state determined by the advisory board chairman to best serve the purpose for which the meeting is called.

(d) Each member of the advisory board shall be given timely notice of each advisory board meeting.

(e) A record must be kept of each advisory board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 2, eff. Sept. 1, 1997.

Sec. 401.0181. PUBLIC TESTIMONY. The advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.04, eff. Sept. 1, 1999.

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

(1) review and evaluate state radiation policies and programs;

Text of subd. (2) as amended by Acts 1997, 75th Leg., ch. 553, Sec. 1

(2) make recommendations and furnish technical advice that may be required on matters relating to development, use, and regulation of sources of radiation to the department, the Texas Natural Resource Conservation Commission, the Railroad Commission of Texas, and other state agencies; and

Text of subd. (2) as amended by Acts 1997, 75th Leg., ch. 554, Sec. 3

(2) make recommendations and furnish technical advice to the department, the commission, the Railroad Commission of Texas, and other state agencies that may be required on matters relating to development, use, and regulation of sources of radiation; and

(3) review proposed rules and guidelines of any state agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 553, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 554, Sec. 3, eff. June 2, 1997.

Sec. 401.020. DUTY OF AGENCIES WITH RADIATION-RELATED PROGRAMS.

A state agency shall:

(1) consider the recommendations and advice of the advisory board that concern the agency's policies or programs related to the development, use, or regulation of a source of radiation; and

(2) provide the advisory board a written response to the recommendations or advice.

Added by Acts 1997, 75th Leg., ch. 553, Sec. 2, eff. June 2, 1997.

#### **SUBCHAPTER C. POWERS AND DUTIES**

Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The board and commission each within its jurisdiction may adopt rules and



guidelines relating to control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.210, eff. Sept. 1, 1995.

Sec. 401.052. RULES FOR TRANSPORTATION AND ROUTING. (a) The board shall adopt rules that provide for transportation and routing of radioactive material and waste in this state.

(b) Rules adopted under this section for low-level radioactive waste must:

(1) to the extent practicable, be compatible with United States Department of Transportation and United States Nuclear Regulatory Commission regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and transporter of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility;

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; and

(6) require a transporter to carry liability insurance in an amount the board determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with regulations imposed by the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(c) In adopting rules under this section, the board shall consult with the advisory board and the commission.

(d) Fees assessed under this section:

(1) may provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission;

(2) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(3) shall be collected by the department and deposited to the credit of the perpetual care account;

(4) shall be used by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(5) may not be collected on waste disposed of at a federal waste disposal facility.

(e) Money expended from the perpetual care account to respond to accidents involving low-level radioactive waste must be reimbursed to the perpetual care account by the responsible shipper or transporter according to rules adopted by the board.

(f) In this section, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 23, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.211, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. [347](#)), Sec. 1, eff. September 1, 2013.

Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The commission shall adopt and enforce groundwater protection standards compatible with federal standards adopted under the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.).

(b) In adopting any standards relating to nonradioactive constituents the commission shall consider the compatibility of those standards with the commission's groundwater protection standards adopted under other programs.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 144, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.212, eff. Sept. 1, 1995.

Sec. 401.053. CLASSIFICATION SYSTEM FOR LOW-LEVEL RADIOACTIVE WASTE. The department may establish a classification system for low-level radioactive waste that is based on radiological, chemical, and biological characteristics and on physical state so that low-level radioactive waste can be managed safely and compatibly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.054. NOTICE AND HEARING. (a) The department shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, on written request of a person affected by any of the following procedures:

(1) the denial, suspension, or revocation by the department of a license or registration;

(2) the determination by the department of compliance with or the grant of exemptions from a department rule or order; or

(3) the grant or amendment by the department of a specific license.

(b) This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.213, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 46, eff. Sept. 1, 1997.

Sec. 401.055. ORDERS. The department or commission shall issue and modify necessary orders in connection with proceedings conducted by the agency under this chapter on matters under the agency's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.214, eff. Sept. 1, 1995.

Sec. 401.056. EMERGENCY ORDERS. (a) If the department or commission finds an emergency exists as a result of a matter under

its jurisdiction that requires immediate action to protect the public health and safety and the environment, the agency, without notice or hearing, may issue an order stating the existence of the emergency and requiring that action be taken at the agency's direction to meet the emergency.

(b) The emergency order is effective immediately.

(c) A person to whom an emergency order is directed shall comply immediately with that order.

(d) The agency shall provide a person to whom an emergency order is directed an opportunity for a hearing on written application to the agency not later than the 30th day following the date of the emergency order.

(e) The agency shall hold a requested hearing not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing application.

(f) The agency shall continue, modify, or revoke an emergency order based on the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.215, eff. Sept. 1, 1995.

Sec. 401.057. RECORDS. (a) The department or commission, within its jurisdiction, shall require each person who possesses or uses a source of radiation to maintain:

(1) records relating to the use, receipt, storage, transfer, or disposal of that source of radiation;

(2) appropriate records that show the radiation exposure of each individual for whom personnel monitoring is required by the agency's rules, licenses, registrations, and orders; and

(3) other records the agency requires.

(b) The board or commission by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

(c) Copies of records required to be maintained under Subsection (a) shall be submitted to the agency on request.

(d) A person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at any time the employee has received exposure that exceeds the maximum permissible levels provided by the agency's rules and on termination of

employment. The person shall furnish to an employee on request a copy of the employee's annual exposure record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.058. INFORMATION. (a) The department shall collect and disseminate information relating to the transportation of sources of radiation. The department and the commission each within its jurisdiction shall collect and disseminate information relating to the control of sources of radiation.

(b) The department and commission each, as part of the collection and dissemination of information, shall maintain:

(1) a file of license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(2) a file of registrants possessing sources of radiation requiring registration under this chapter and any administrative or judicial action relating to those registrants; and

(3) a file of pending and adopted rules and guidelines relating to regulation of sources of radiation and proceedings relating to those rules and guidelines.

(c) The commission, as part of the collection and dissemination of information, shall maintain a file of:

(1) known locations in this state at which radioactive material has been disposed of and at which soil and facilities are contaminated; and

(2) information on inspection reports relating to the radioactive material disposed of and radiation levels at those locations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.059. PROGRAM DEVELOPMENT. (a) The department shall develop programs to evaluate hazards associated with the use of sources of radiation.

(b) The department and commission shall develop programs within their respective jurisdictions with due regard for compatibility with

federal programs for the regulation of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.217, eff. Sept. 1, 1995.

Sec. 401.060. STUDIES, INVESTIGATIONS, ETC. The department and commission each within its jurisdiction shall encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.061. LOW-LEVEL RADIOACTIVE WASTE STUDIES. The department and commission each within its jurisdiction shall conduct studies of the need for low-level radioactive waste processing and disposal facilities and technologies as the agency considers necessary for minimizing the risks to the public and the environment from low-level radioactive waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.062. TRAINING PROGRAMS. (a) The department and commission each may institute training programs to qualify their personnel to carry out this chapter.

(b) The department and commission each may make those personnel available to participate in a program of the federal government, another state, or an interstate agency to carry out this chapter's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.063. GENERAL INSPECTION AUTHORITY. (a) The department or commission or the agency's representative may enter

public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with this chapter and the agency's rules, licenses, registrations, and orders under this chapter.

(b) The department or commission or the agency's representative may enter an area under the jurisdiction of the federal government only with the concurrence of the federal government or its designated representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The board shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the board shall consider the threat to human health and safety that the electronic products may present.

(c) The board shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The board by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the board shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas State Board of Podiatric Medical Examiners for the inspection of podiatric medical electronic products, the Texas State Board of Medical Examiners for the inspection of medical electronic products, the Texas State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and

the State Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 207, Sec. 1, eff. May 19, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 80, eff. Sept. 1, 1995.

Sec. 401.065. INSPECTION AGREEMENTS. The department or commission, in matters under its jurisdiction, with the approval of the governor, may enter into an agreement with the federal government, another state, or an interstate agency under which the state, in cooperation with the other parties to the agreement, performs inspections or other functions relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.219, eff. Sept. 1, 1995.

Sec. 401.066. SURVEILLANCE PLANS. The department shall prepare and update emergency and environmental surveillance plans for fixed nuclear facilities in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.067. LOCAL GOVERNMENT INSPECTIONS. (a) An agent or employee of a local government may examine and copy during regular business hours records relating to activities licensed under Subchapter F. Examinations and copying of records must be done at the local government's expense and subject to limitations in Chapter 552, Government Code.

(b) Records copied under this section are public records unless the record's owner shows to the satisfaction of the commission that the records if made public will divulge trade secrets. On such a showing, the commission shall consider the copied records confidential.

(c) A local government agent or employee may not enter private property that has management in residence unless the agent or



employee notifies the management, or person in charge, of the agent's or employee's presence and exhibits proper credentials. The agent or employee shall observe the rules of the establishment being inspected relating to safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.220, eff. Sept. 1, 1995.

Sec. 401.068. IMPOUNDING SOURCES OF RADIATION. The department or commission, in an emergency relating to a substance or activity under the agency's jurisdiction, may impound or order impounded sources of radiation that are in the possession of a person who is not equipped to observe or fails to observe this chapter or the agency's rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The board or commission must adopt as a rule any memorandum of understanding between the department or commission, as appropriate, and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.070. RELATIONSHIP WITH OTHER ENTITIES. The department shall advise, consult, and cooperate, on matters under its jurisdiction, with other state agencies, the federal government, other states, interstate agencies, local governments, and groups concerned with the control and transportation of sources of radiation. The commission shall advise, consult, and cooperate with those entities on matters under its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

(1) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites for and disposal of low-level radioactive waste; and

(2) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities on matters involving the disposal of low-level radioactive waste.

(b) In carrying out its duties under this section the commission may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source; and

(2) contract with the federal government, the state, interstate agencies, local governmental agencies, and private entities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 3, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. LICENSING AND REGISTRATION**

Sec. 401.101. LICENSE AND REGISTRATION REQUIREMENT. A person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of a source of radiation unless that person has a license, registration, or exemption from the department or commission as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.102. APPLICATION TO NUCLEAR REACTOR FACILITIES. Nuclear reactor facilities licensed by the federal commission are not required to be licensed or registered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND REGISTRATION. (a) The board shall adopt rules and guidelines that provide for licensing and registration for the transportation of sources of radiation.

(b) The board and commission each within its jurisdiction shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the board and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.104. LICENSING AND REGISTRATION RULES. (a) Except as provided by Subsections (b) and (e), the board by rule shall provide for the general or specific licensing of:

- (1) radioactive material; or
- (2) devices or equipment using radioactive material.

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive substances.

(c) The board or commission shall provide in its rules for the issuance, amendment, suspension, and revocation of licenses.

(d) The board or commission, within its jurisdiction, may require the registration or licensing of other sources of radiation.

(e) The board or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the assessment and remediation of the contamination at the site.

(f) A separate commercial storage and processing license may be issued for a site also licensed for disposal under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1338, Sec. 3, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 3, eff. June 15, 2007.

Sec. 401.105. RECOGNITION OF OTHER LICENSES. The board or commission, within its jurisdiction, by rule may recognize other federal or state licenses the board or commission, as appropriate, considers desirable, subject to registration requirements the board or commission, as appropriate, may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.106. EXEMPTION FROM LICENSING OR REGISTRATION REQUIREMENTS OR FROM APPLICATION OF RULE. (a) The board or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the board or commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

(b) The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under this chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

(c) Notwithstanding any other law, the commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any site at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission

finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 4, eff. June 15, 2007.

Sec. 401.107. LICENSE APPLICATION. (a) An application for a specific license issued by the board or commission must be in writing and must state the information that the board or commission, as appropriate, by rule determines to be necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the issuing agency considers reasonable or necessary to protect the occupational and public health and safety and the environment.

(b) The issuing agency at any time after an application is filed with the agency, and if the application is for a renewal, before the expiration of the license, may require further written statements and may make inspections the agency considers necessary to determine if the license should be granted or denied or if the current license should be modified, suspended, or revoked.

(c) The applicant or license holder shall sign each license application and each statement, and the agency may require the applicant or license holder to make the application or statement under oath.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995.

Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a license is issued or renewed by the commission, the applicant shall demonstrate to the commission that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to the commission.

(b) A license holder shall submit to the department or

commission, as appropriate, at intervals required by board or commission rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a).

(c) The commission at regular intervals not to exceed five years shall reevaluate the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 5, eff. June 15, 2007.

Sec. 401.109. SECURITY. (a) The department or commission may require a holder of a license issued by the agency to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter. The department shall deposit security provided to the department under this section to the credit of the perpetual care account. The department by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

(b) The commission shall require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission to assure performance of the license holder's obligations under this chapter.

(c) The amount and type of security required shall be determined under the agency's rules in accordance with criteria that include:

- (1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;
- (2) reasonable estimates of the cost of decontamination,

decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(d) In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;

(3) a certificate of deposit;

(4) an irrevocable letter of credit;

(5) a deposit of government securities;

(6) an insurance policy, the form and content of which is acceptable to the agency; and

(7) other security acceptable to the agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 6, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 2, eff. September 1, 2013.

Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code.

(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and compliance history of an applicant, license holder, or registration holder. After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's compliance history reveals a

recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.28, eff. September 1, 2011.

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES. (a) The commission, in adopting rules for the issuance of licenses under the commission's jurisdiction for new sites for processing or disposal of radioactive substances from other persons, shall adopt criteria for the designation of unsuitable sites, including:

- (1) flood hazard areas;
- (2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or
- (3) areas in which soil conditions make spill cleanup impracticable.

(b) The commission shall consult with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The commission by rule shall:

- (1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and
- (2) prohibit issuance of licenses for unsuitable sites as defined by the rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. [1604](#)), Sec. 7, eff. June 15, 2007.



Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The commission, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;
- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including:
  - (A) financial and technical qualifications and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission; and
  - (B) the demonstration of financial qualifications under Section 401.108;
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and
- (17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and

chemical characteristics of the soils, groundwater, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the commission to consider the factors under Subsection (a).

(c) The commission by rule shall provide specific criteria for the different types of licensed low-level radioactive waste activities for the listed factors and may include additional factors and criteria that the commission determines necessary for full consideration of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 8, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.29, eff. September 1, 2011.

Sec. 401.113. ENVIRONMENTAL ANALYSIS. (a) Before a hearing under Section 401.114 begins, the commission shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the commission determines has a significant effect on the human environment.

(b) The commission shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

(c) The analysis must include:

(1) an assessment of radiological and nonradiological effects of the activity on the public health;

(2) an assessment of any effect on a waterway or groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of low-level

radioactive waste, to be conducted under the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.224, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 9, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 9, eff. June 15, 2007.

Sec. 401.114. NOTICE AND HEARING. (a) Before the commission grants or renews a license to process or dispose of low-level radioactive waste from other persons, the commission shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The commission shall mail, by certified mail in the manner provided by the commission's rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the commission or the applicant must certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.225, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 10, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 10, eff. June 15, 2007.

Sec. 401.115. LICENSES FROM OTHER AGENCIES. A holder of a license to operate a facility to process or dispose of low-level radioactive waste may not operate the facility until the holder has

obtained all other required licenses or permits from other agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 11, eff. Sept. 1, 1999.

Sec. 401.116. LICENSE AMENDMENT. (a) An amendment to a license to process or dispose of low-level radioactive waste from other persons may take effect immediately.

(b) The department or commission, as appropriate, shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Notice under this section must include:

- (1) the identity of the license holder;
- (2) identification of the license; and

(3) a short and plain statement of the license amendment's substance.

(d) The agency shall give notice and hold a hearing to consider the license amendment if a person affected files a written complaint with the agency before the 31st day after the date on which notice is published under Subsection (b). The agency shall give notice of the hearing as provided by Section 401.114.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.226, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 12, eff. Sept. 1, 1999.

Sec. 401.117. CONSTRUCTION LIMITATION. The commission shall prohibit major construction relating to activities to be permitted under a license issued by the commission to process or dispose of low-level radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.227, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 13, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 11, eff. June 15, 2007.

Sec. 401.118. LICENSE FORM AND CONTENT. (a) The board or commission shall prescribe the form and the terms for each license it issues.

(b) Each license is subject to amendment, revision, or modification by rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.228, eff. Sept. 1, 1995.

Sec. 401.119. LICENSE TRANSFER. A license issued by the department or commission may be assigned only to a person qualified under rules of the issuing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.229, eff. Sept. 1, 1995.

#### **SUBCHAPTER E. MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE**

Sec. 401.151. COMPATIBILITY WITH FEDERAL STANDARDS. The department and commission each shall assure that the management of low-level radioactive waste under their respective jurisdictions is compatible with applicable federal commission standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 15, eff. Sept. 1, 1999.

Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the department or commission, under procedures provided by Section 401.056, finds that low-level radioactive waste under its jurisdiction threatens the public health and safety and the environment and that the license holder managing the low-level radioactive waste is unable to remove the threat, the agency by order may require any action, including a corrective measure, that is necessary to remove the threat.

(b) The department shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the license holder;
- (2) convert an amount of security into cash, as necessary;

and

(3) disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) The commission shall use the security provided by the license holder to pay the costs of actions taken or to be taken under this section, including costs associated with the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the license holder;
- (2) convert an amount of security to cash, as necessary;

and

(3) disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 16, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 3, eff. September 1, 2013.

#### **SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

Sec. 401.2005. DEFINITIONS. In this subchapter:

(1) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact established under Section 403.006.

(1-a) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact.

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(2) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the commission under this subchapter for the disposal of compact waste.

(3) "Disposal facility site" means the tract of land on which is located the compact waste disposal facility and the federal facility waste disposal facility, if applicable. The term includes the immediate area surrounding the facility or facilities.

(4) "Federal facility waste" means low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(5) "Federal facility waste disposal facility" means a facility for the disposal of federal facility waste licensed under Section 401.216.

(6) "Host state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(7) "Party state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 1, eff. September 1, 2011.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. The commission shall directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. The person making the disposal shall comply with this subchapter and commission rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.202. LICENSING AUTHORITY. (a) The commission may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 12, eff. June 15, 2007.



Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application for a compact waste disposal facility license may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule.

(b) If an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, the commission may allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal facility site.

(c) If an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, the attorney general shall, on request of the commission, institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire fee simple interest in the mineral right.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste disposal facility license holder shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of compact waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all required right, title, and interest in land and buildings acquired under commission rules adopted under Section 401.204, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in compact waste located on the property conveyed.

(b) The compact waste disposal facility license holder, if licensed under Section 401.216 to dispose of federal facility waste, shall:

(1) arrange for and pay the costs of management, control,

stabilization, and disposal of federal facility waste and the decommissioning of the licensed federal facility waste disposal activity;

(2) on decommissioning of the licensed federal facility waste disposal activity, convey to the federal government, as provided by the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq. ), as amended, all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204, together with requisite rights of access to that property;

(3) formally acknowledge before termination of the license the conveyance to the federal government of the right, title, and interest in radioactive waste located on the property conveyed; and

(4) before accepting federal facility waste, submit to the commission a written agreement, signed by an official of the federal government, stating that the federal government will assume all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204 for the disposal of federal facility waste, together with requisite rights of access to the land and buildings, in accordance with the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste disposal facility license holder shall convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance occurs when the acceptance criteria specified in the license have been satisfied. This section does not apply to federal facility waste accepted at a federal facility waste disposal facility.

(b) The title and all related rights and interest in compact waste conveyed under this section are the property of the commission on the state's behalf. The commission may administer the waste as

property in the name of the state.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste disposal facility license holder shall reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission.

(b) The commission may require that the compact waste disposal facility license holder provide facilities at the disposal site for the resident inspectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 20, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE. (a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

- (1) accepted under a compact to which the state is a contracting party;
- (2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or
- (3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states. The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:

(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter as provided by commission rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or

(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.

(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.

(e-2) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account.

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting

the analysis of the impact of the surcharge.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 4, eff. September 1, 2013.

Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based

on the curie capacity;

(3) the necessity of containerization of the waste;

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public; and

(5) the costs and benefits of volume reduction and stabilized waste forms.

(c) Not later than December 1, 2016, the commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) The commission may conduct a study described by Subsection (a) at any time after December 1, 2012, if the commission determines that a study is necessary.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 5, eff. September 1, 2013.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

(1) the segregation of financial assurance funds from other funds;

(2) the degree of risk that the financial instruments are subject to financial reversal;

(3) potential post-closure risks associated with the compact waste disposal facility; and

(4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing

committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. (a) The commission may acquire the fee simple title in land, affected mineral rights, and buildings at which low-level radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of low-level radioactive waste until the commission determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The commission may lease property acquired under this section for operating a disposal site for low-level radioactive waste.

(d) The right, title, and interest in low-level radioactive waste accepted for disposal at property and facilities acquired under this section and any other interest acquired under this chapter are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(e) A right, title, or interest acquired under this chapter does not vest in any fund created by the Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 145, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter shall be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.211. LIABILITY. (a) The transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) The acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the waste accepted, stored, or disposed of.

(c) The compact waste disposal facility license must require the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by the commission for the disposal of federal facility waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The commission may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.213. INTERSTATE COMPACTS. The commission shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of low-level radioactive waste generated in the region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. The compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Subject to limitations provided by Sections 401.207 and 401.248, the compact waste disposal facility shall accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The commission may license the compact waste disposal facility license holder to dispose of federal facility waste. The commission may license federal facility waste disposal only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste and that is adjacent to the compact waste disposal facility.

(b) For the first five years after a license under this section is issued, the commission shall limit the overall capacity of the federal facility waste disposal facility to not more than three

million cubic yards. Of that amount, the commission shall limit the total volume of waste accepted at the federal facility waste disposal facility that must be disposed of in accordance with Section 401.218 to not more than 300,000 cubic yards.

(c) Unless the commission makes an affirmative finding that increasing the capacity of the federal facility waste disposal facility would pose a significant risk to human health, public safety, or the environment, on the fifth anniversary of the date the license under this section is issued, the commission shall increase the overall capacity of the federal facility waste disposal facility by three million cubic yards, for a total capacity of six million cubic yards, and shall increase the acceptable volume of waste that must be disposed of in accordance with Section 401.218 by 300,000 cubic yards, for a total volume of 600,000 cubic yards.

(d) The commission may not allow commingling of compact waste and federal facility waste.

(e) The compact waste disposal facility license holder may not accept federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the compact waste disposal facility.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The commission may not issue a license for a compact waste disposal facility or license the operation of a federal facility waste disposal facility if the disposal facility site is located:

(1) in a county any part of which is located 62 miles or less from an international boundary;

(2) in a county in which the average annual rainfall is greater than 20 inches;

(3) in a county that adjoins river segment 2309, 2310, or 2311 as identified by the commission in the Texas Surface Water Quality Standards, 30 T.A.C. Section 307.10(3);

(4) in a 100-year flood plain; or

(5) less than 20 miles upstream of or up-drainage from the maximum elevation of the surface of a reservoir project that:

(A) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Army

Corps of Engineers; or

(B) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by commission rule.

(b) The compact waste disposal facility license holder shall dispose of Class B low-level radioactive waste and Class C low-level radioactive waste:

(1) within a reinforced concrete container and within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete; and

(2) in such a manner that the waste can be monitored and retrieved.

(c) The commission by rule may require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). To the extent practicable, rules adopted under this subsection shall be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61.

(d) In addition to the fees charged to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission, the commission's executive director may charge a license holder a fee to cover the administrative costs of the executive director's action to adjust, correct, or otherwise modify a license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 6, eff. September 1, 2013.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) As a condition for obtaining a compact waste disposal facility license, an applicant must submit to the commission or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Before determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques, including:

- (1) waste processing and reduction at the site of waste generation and at the disposal facility; and
- (2) the use of aboveground isolation facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.220. DESIGN OF FACILITY. The design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.221. MIXED WASTE. (a) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) The compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility shall comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.222. TERM OF LICENSE. The compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The commission, the department, and local public health officials shall develop a health surveillance survey for the population located in the vicinity of the disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The department shall adopt rules relating to the packaging of radioactive waste.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) On arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the compact waste disposal facility or a federal facility waste disposal facility begins. The written notice must contain information required by the department.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder shall properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly

processed and packaged.

(b) The compact waste disposal facility license holder shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) In selecting an application for the compact waste disposal facility license, the commission shall:

(1) issue notice of the opportunity to submit an application to dispose of low-level radioactive waste in accordance with Section 401.228;

(2) review all applications received under Subdivision (1) for administrative completeness;

(3) evaluate all administratively complete applications in accordance with the evaluation criteria established by Sections 401.233-401.236 and shall select the application that has the highest comparative merit in accordance with Section 401.232; and

(4) review the selected application under Subdivision (3) for technical completeness and issue a draft license in accordance with Sections 401.237 and 401.238.

(b) If the selected application is rejected or denied by the commission, the commission may select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later than January 1, 2004, the commission shall give to the secretary of state for publication in the Texas Register notice that:

(1) the commission will accept applications for a 30-day period, beginning 180 days after the date of the Texas Register notice, for the siting, construction, and operation of a facility or facilities for disposal of low-level radioactive waste;

(2) applications must comply with Chapter 401, Health and

Safety Code, the rules of the commission, and any other applicable requirements in the commission's discretion;

(3) applications must include a nonrefundable \$500,000 application processing fee;

(4) applications received within the 30-day application receipt period will be evaluated by the commission for administrative completeness;

(5) applications deemed administratively complete will be evaluated by the commission in accordance with the statutory evaluation criteria under Sections 401.233-401.236; and

(6) based on the commission's evaluation, one application will be selected to be processed by the commission.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.229. APPLICATION PROCESSING FEE. An application for a compact waste disposal facility license must include payment to the commission of an application processing fee of \$500,000. The commission may not review an application for administrative completeness until the commission receives the application processing fee. The application processing fee is nonrefundable. If the commission's costs in processing an application under this subchapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day period beginning 180 days after the date notice is published under Section 401.228, the commission shall accept applications for a compact waste disposal facility license.

(b) Not later than the 45th day after the date an application is received, the commission shall issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commission to be administratively incomplete.



(c) The commission shall provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) The commission shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The commission shall consider as administratively complete an application for which the commission has received the portions of the application necessary to allow the commission to review the technical merits of the application, including:

- (1) the identity and qualifications of the applicant;
- (2) a description of the proposed disposal facility or facilities and disposal facility site;
- (3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;
- (4) a description of the proposed schedules for construction, receipt of waste, and closure;
- (5) a description of the financial assurance mechanism to be used;
- (6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;
- (7) a characterization of the area and disposal facility site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;
- (8) a description of the safety programs to be used at the proposed facility or facilities;
- (9) a copy of the warranty deed or other conveyance showing required right, title, and interest in the land and buildings on which the facility or facilities are proposed to be located is owned in fee by the applicant as required by Section 401.204;
- (10) an application processing fee in the amount prescribed by Section 401.229 and proof of additional funds sufficient to cover

any further costs of processing the application as estimated by the commission; and

(11) a copy of a resolution of support of the proposed facility or facilities from the commissioners court of the county in which the facility or facilities are proposed to be located.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSION SELECTION. (a) The commission shall have prepared by commission personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233-401.236.

(b) The commission shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The commission shall set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) The commission may issue a request for further information to each applicant whose application is determined by the commission to be insufficient for the purposes of the commission's evaluation.

(d) The commission shall provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of the commission.

(e) The commission shall use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The commission shall evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving:

(1) equal weight to each criterion within a tier of criteria; and

(2) the greatest weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Before publication of the notice of the commission's intention to accept applications under Section 401.228, the

commission by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the commission may evaluate applications. The criteria must be consistent with those sections.

(g) Not later than the 270th day after it receives the last timely filed application, the commission, based on the written evaluations and application materials, shall select the application that has the highest comparative merit.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.233. TIER 1 CRITERIA. (a) The commission shall consider as tier 1 criteria:

(1) the natural characteristics of the disposal facility site for a proposed disposal facility or facilities;

(2) the adequacy of the proposed facility or facilities and activities to safely isolate, shield, and contain low-level radioactive waste from mankind and mankind's environment; and

(3) the adequacy of financial assurance related to the proposed activities.

(b) Natural characteristics of the disposal facility site include:

(1) the suitability of the site for the proposed activities, including the site's:

(A) geological characteristics;

(B) topography, including features relating to erosion;

(C) surface and underground hydrology;

(D) meteorological factors; and

(E) natural hazards;

(2) the compatibility of disposal activities with any uses of land near the site that could affect the natural performance of the site or that could affect monitoring of the disposal facility or facilities and disposal facility site;

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the disposal facility site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

- (C) air particulate levels;
  - (D) soil characteristics, including chemical characteristics;
  - (E) surface water and groundwater characteristics; and
  - (F) flora and fauna at the site;
- (4) the possible effects of disposal activities on flora and fauna at or near the site; and
  - (5) the ease of access to the site.
- (c) Adequacy of the proposed disposal facility or facilities and activities includes:
- (1) the capability of the proposed facility or facilities and activities to isolate, shield, and contain low-level radioactive waste in conformity with federal standards;
  - (2) acceptable operational safety; and
  - (3) acceptable long-term safety as demonstrated by analysis or study.
- (d) Financial assurance criteria include:
- (1) adequacy of the applicant's financial qualifications to:
    - (A) conduct the licensed activities as proposed, including:
      - (i) any required decontamination, decommissioning, reclamation, or disposal; and
      - (ii) control and maintenance of the disposal facility site and facility or facilities after the cessation of active operations; and
    - (B) address any unanticipated extraordinary events that would pose a risk to public health and safety and the environment and that may occur at the disposal facility site after decommissioning and closure of the disposal facility or facilities;
  - (2) the adequacy of the applicant's financial assurance in an amount and type acceptable to the commission and adequate to cover potential injury to any property or person;
  - (3) the adequacy of the applicant's financial security, as required by commission rules; and
  - (4) the degree of certainty that the applicant will be able to maintain adequate financial security.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.234. TIER 2 CRITERIA. The commission shall consider as tier 2 criteria:

(1) the suitability of facilities at the site that are associated with proposed activities and the adequacy of their engineering and design; and

(2) the suitability of the proposed disposal facility or facilities for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under the system established under Section 401.053.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.235. TIER 3 CRITERIA. The commission shall consider as tier 3 criteria the applicant's:

(1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;

(2) experience in management and disposal of low-level radioactive waste and other radioactive materials;

(3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;

(4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Section 401.243;

(5) training programs proposed for its employees whose duties relate to the proposed disposal facility site and activities;

(6) monitoring, recordkeeping, and reporting plans;

(7) low-level radioactive waste spill detection and cleanup plans for the proposed disposal facility site and activities;

(8) decommissioning and postclosure plans;

(9) security plans;

(10) monitoring and protection plans for workers;

(11) emergency plans;

(12) plans for background monitoring during the license period, including analysis of the ambient conditions of the disposal facility site and analysis of established trends of the disposal facility site's natural parameters, including:

(A) natural background radioactivity levels;

- (B) radon gas levels;
  - (C) air particulate levels;
  - (D) soil characteristics, including chemical characteristics;
  - (E) surface water and groundwater characteristics; and
  - (F) flora and fauna at the site; and
- (13) ability to adequately manage the proposed disposal facility or facilities and activities for the term of the license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.236. TIER 4 CRITERIA. The commission shall consider as tier 4 criteria:

- (1) the compatibility of uses of land near the proposed disposal facility site that could be affected by the construction and operation of the disposal facility or facilities; and
- (2) possible socioeconomic effects on communities in the host county of:
  - (A) the proposed disposal facility or facilities;
  - (B) the operation of the proposed disposal facility or facilities; and
  - (C) related transportation of low-level radioactive waste to the disposal facility or facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the commission's selection of the application that has the highest comparative merit in accordance with Section 401.232, the commission shall begin a technical review of the selected application.

(b) The commission shall complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) The commission shall give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before the commission, except those the executive director of the commission determines necessary to avert or address a health and safety emergency.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the technical review of the selected application and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice shall include a statement that the draft license is available for review on the commission's website and that the draft license and the application materials are available for review at the offices of the commission and in the county or counties in which the proposed disposal facility site is located. Notice shall be published in the Texas Register and in a newspaper of general circulation in each county in which the proposed disposal facility site is located. The applicant shall mail the notice by certified mail to each person who owns land adjacent to the proposed disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION.

(a) An administrative law judge of the State Office of Administrative Hearings shall conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) The administrative law judge may not admit as a party to the contested case hearing a person other than the applicant, the executive director of the commission, or a person affected.

(c) The administrative law judge shall issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) The commission shall take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any other

law, a person affected by an action of the commission under this subchapter may file a petition for judicial review of the action only after the commission takes final action on a license application under Section 401.239(d). A petition must be filed not later than the 30th day after the date of the final action.

(b) In its review of an action under this subchapter, a court may not substitute its judgment for the judgment of the commission on the weight of the evidence the commission considered, but:

- (1) may affirm the action in whole or in part; and
- (2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions:
  - (A) are in violation of a constitutional or statutory provision;
  - (B) are in excess of the commission's statutory authority;
  - (C) are made through unlawful procedure;
  - (D) are affected by other error of law;
  - (E) are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
  - (F) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

(b) The amount of security required of a license holder under this section may not be less than \$20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial



obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

(1) the amount of low-level radioactive waste received at the site;

(2) the long-term risk to health, safety, and the environment posed by the waste; and

(3) the need to address and prevent unplanned events that pose a risk to public health and safety.

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.242. ACCEPTANCE OF WASTE. (a) The commission shall require the compact waste disposal facility license holder to follow, as closely as is possible, the schedule submitted to the commission under Section 401.231. If the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, the license holder may accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) If the commission finds that the compact waste disposal facility license holder has violated this chapter or any commission rule in a manner that may endanger public health or safety, the commission may prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until the commission finds that the license holder is in compliance with the statute or

rule found to be violated.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.244. HOST COUNTY PUBLIC PROJECTS. (a) The compact waste disposal facility license holder each quarter shall transfer to the commissioners court of the host county five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

(b) The commissioners court of the host county may:

(1) spend the money for public projects in the host county; or

(2) disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.

(c) Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large.

(d) Money received by the commissioners court of the host county under this section is not a loan or grant-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 16, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 32, eff. Sept. 1, 1999. Renumbered

from Health and Safety Code Sec. 402.252 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 8, eff. Sept. 1, 2003.

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 9, eff. Sept. 1, 2003.

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) A compact waste disposal facility license holder who receives party state compact waste for disposal pursuant to the compact shall have collected a waste disposal fee to be paid by each person who delivers party state compact waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(c) In determining relative hazard, the commission shall consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Rules adopted under this section may include provisions establishing:

(1) classification of customers and services; and

(2) applicability of fees.

(e) Fees adopted under this section must be consistent with the criteria listed under Section 401.246.

(f) A rule or order adopted by the commission under this section may not conflict with a ruling of a federal regulatory body.

(g) For the purposes of a contested case involving the adoption

of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(1), eff. September 1, 2013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 5.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 17, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 33, eff. Sept. 1, 1999.

Renumbered from Health and Safety Code Sec. 402.272 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(1), eff. September 1, 2013.

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES.

(a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(2), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(2), eff. September 1, 2013.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL.

(a) At any time after the commission has granted approval to begin

operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. (a) Party state compact waste disposal fees adopted by the commission under Section 401.245 must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility;

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules; and

(6) provide an amount necessary to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) To the extent practicable, the commission shall use the methods used by the Public Utility Commission of Texas under Sections 36.051, 36.052, and 36.053, Utilities Code, when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a).

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 804, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 449, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 878, Sec. 19, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(30), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 402.273 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 6.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. [1504](#)), Sec. 7, eff. September 1, 2011.

Sec. 401.247. REASONABLE AND NECESSARY EXPENSES. Fees paid

under this subchapter are reasonable and necessary expenses for ratemaking purposes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.03, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 402.276 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. (a) The commission by rule shall exclude from a disposal facility certain types of low-level radioactive waste that are incompatible with disposal operations.

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of in this state from 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

(c) This section does not affect the ability of this state to transfer low-level radioactive waste to another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1244, Sec. 11, eff. September 1, 2011.

(e) The compact waste disposal facility license holder may not accept compact waste at the compact waste disposal facility unless the compact commission established by the compact under Section 403.006 has adopted bylaws necessary to carry out the terms of the compact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 583, Sec. 5, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0511, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 13, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 29, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.219 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 11, eff. September 1, 2011.

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) The low-level radioactive waste fund is in the state treasury.

(b) The low-level radioactive waste fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Except as otherwise provided by this chapter, money collected by the commission, including fees collected under Section 401.229, any additional fees collected to recover costs of processing a license application, annual fees, and any other fees necessary to administer this subchapter shall be deposited to the credit of the low-level radioactive waste fund.



(d) Section 403.095, Government Code, does not apply to the low-level radioactive waste fund.

(e) The commission may transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by the commission under Section 401.303. The commission shall notify the Texas Low-Level Radioactive Waste Disposal Compact Commission of an action the commission takes under this subsection.

(f) The commission shall deposit in the account the portion of the fee collected under Section 401.245 that is calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 of this code). The fee shall be assessed for party state compact waste and nonparty compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 148, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 804, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 20, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 35, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 11, eff. Sept. 1, 2003. Renumbered from Health and Safety Code Sec. 402.275 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 7, eff. September 1, 2013.

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state;

and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of \$30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute \$50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of \$25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(f) This section prevails over any other law or agreement in conflict or inconsistent with this section.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 13, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 9, eff. September 1, 2011.

Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal compact commission account is an account in the general revenue fund. (b) On the first day of each state fiscal year, the comptroller shall transfer from the low-level radioactive waste fund to the low-level radioactive waste disposal compact commission account an amount equal to the amount appropriated for that state fiscal year. On September 30 of each fiscal year, the comptroller shall transfer the

unexpended and unencumbered money from the previous fiscal year in the low-level radioactive waste disposal compact commission account to the low-level radioactive waste fund.

(c) Money in the low-level radioactive waste disposal compact commission account may be used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.02, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 8, eff. September 1, 2013.

#### **SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL**

Sec. 401.261. SUBCHAPTER APPLICATION. In this subchapter:

(1) "By-product material" does not include that by-product material defined by Section 401.003(3)(A).

(2) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.232, eff. Sept. 1, 1995.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission has sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with:

(1) the federal commission's applicable standards; and

(2) closure criteria the federal commission and the United States Environmental Protection Agency have determined are protective of human health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 4, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 13, eff.

June 15, 2007.

Sec. 401.2625. LICENSING AUTHORITY. The commission has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material recovery and processing or for storage, processing, or disposal of by-product material.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993;  
Acts 1997, 75th Leg., ch. 1338, Sec. 5, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 14, eff.  
June 15, 2007.

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS. (a) If the commission is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of by-product material and the commission determines that the licensed activity will have a significant impact on the human environment, the commission shall prepare or have prepared a written environmental analysis.

(b) The analysis must include:

- (1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;
- (2) an assessment of any effect of the licensed activity on a waterway or groundwater;
- (3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and
- (4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

(c) The commission shall give notice of the analysis as provided by commission rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) After notice is given, the commission shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the commission's proceedings.

(f) The commission by rule shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 6, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 15, eff. June 15, 2007.

Sec. 401.264. NOTICE AND HEARING. (a) The commission on its own motion may or on the written request of a person affected shall provide an opportunity for a public hearing on an application over which the commission has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The commission shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The commission shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission and include findings. The written determination is available to the public.

(e) The determination is subject to judicial review in a district court of Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 7, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 16, eff. June 15, 2007.

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission shall prescribe conditions in a radioactive substances license issued, renewed, or amended for an activity that results in production of by-product material to minimize or, if possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the commission and that are compatible with the federal commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 8, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 17, eff. June 15, 2007.

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The commission by rule or order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the federal commission determines before the license terminates that the transfer of title to the land and the by-product

material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

(b) By-product material transferred to the state under this section shall be transferred without cost to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 9, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 18, eff. June 15, 2007.

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with protecting public health, safety, and the environment.

(b) The commission may sell land acquired under this section at the land's fair market value after the commission has taken corrective action to restore the land to a condition that does not compromise the public health or safety or the environment. The General Land Office shall negotiate and close a transaction under this subsection on behalf of the commission using procedures under Section 31.158(c), Natural Resources Code. Proceeds from the transaction shall be deposited in the Texas capital trust fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 10, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 244, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 19, eff. June 15, 2007.

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for acts performed before the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES.

(a) The commission may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section 401.267 that are necessary to protect the public health and safety and the environment.

(b) The commission shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 11, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 20, eff. June 15, 2007.

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the commission finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or the environment, the commission by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The commission may issue an emergency order to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of by-product material if it appears that there is an actual or threatened release of source material or by-product material that presents an imminent and substantial danger to the public health and safety or the environment, regardless of whether the activity was lawful at the time. The emergency order may be issued without notice or hearing.



- (c) An emergency order may be issued under Subsection (b) to:
- (1) restrain the person from allowing or continuing the release or threatened release; and
  - (2) require the person to take any action necessary to provide and implement an environmentally sound remedial action plan designed to eliminate the release or threatened release.
- (d) An emergency order issued under Subsection (b) shall:
- (1) be delivered to the person identified by the order by certified mail, return receipt requested;
  - (2) be delivered by hand delivery to the person identified by the order; or
  - (3) on failure of delivery of the order by certified mail or hand delivery, be served on the person by publication:
    - (A) once in the Texas Register; and
    - (B) once in a newspaper of general circulation in each county in which was located the last known address of a person identified by the order.
- (e) The commission shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:
- (1) enforce security supplied by the licensee;
  - (2) convert an amount of security into cash, as necessary;
- and
- (3) disburse from the security in the perpetual care account the amount necessary to pay the costs.
- (f) If an order issued by the commission under this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency order, and a place for a hearing to be held in accordance with the rules of the commission. As a result of this hearing, the commission shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1072, Sec. 47, eff. Sept. 1, 1997; Acts 1997,

75th Leg., ch. 1338, Sec. 12, eff. June 20, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 21, eff. June 15, 2007.

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section as follows:

(1) five percent shall be remitted to the comptroller for deposit to the credit of the general revenue fund; and

(2) five percent shall be remitted to the host county in accordance with Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to compact waste or federal facility waste as defined by Section 401.2005 or industrial solid waste as defined by Section 361.003.

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 10, eff. September 1, 2011.

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. The license holder shall comply with the commission's audit-related requests for information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.

#### SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 401.301. LICENSE AND REGISTRATION FEES. (a) The commission and department may collect a fee for each license and registration the agency issues.

(b) The commission and the board each by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

- (1) process applications for licenses or registrations;
- (2) amend or renew licenses or registrations;
- (3) make inspections of license holders and registrants;

and

(4) enforce this chapter and rules, orders, licenses, and registrations under this chapter.

(c) The commission and department may collect a fee, in addition to the license and registration fee, of not less than 20 percent of the amount of the license and registration fee nor more than \$10,000 from each licensee or registrant who fails to pay the fees authorized by this section.

(d) The commission and department shall require that each person who holds a specific license issued by the agency pay to the agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(3), eff. September 1, 2013.

(f) Notwithstanding any other provision of this section, the department may not assess a fee on a local law enforcement agency for the licensing and registration of an X-ray machine that is used to screen packages or other objects the agency suspects may contain an explosive or other item that would pose a danger to the public health and safety. Except as otherwise provided by this subsection, a local law enforcement agency is subject to the licensing and registration requirements of this chapter.

(g) The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.233, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 15, 16, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1061 (H.B. 2285), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 23, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.015, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.016, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(3), eff. September 1, 2013.

Sec. 401.302. NUCLEAR REACTOR AND FIXED NUCLEAR FACILITY FEE.

(a) The department, in coordination with the commission, may set and

collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

(b) The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 24, eff. June 15, 2007.

Sec. 401.303. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE. (a) The department or commission may require the holder of a license issued by the agency to pay annually to the issuing agency an amount determined by the issuing agency if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

(b) The issuing agency annually shall review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(c) The issuing agency may review estimates of costs that are required to be incurred under this chapter in accordance with the need, nature, and cost of decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment.

(d) The issuing agency shall set the charges for maintenance and perpetual care at amounts consistent with existing technology.

(e) The issuing agency may not impose charges that exceed the amount that the issuing agency projects to be required for maintenance, surveillance, and other necessary care required after the licensed activity is terminated.

(f) An increase in costs may not be applied retroactively but may apply to increases in subsequent annual payments.

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account or the

environmental radiation and perpetual care account, as applicable, the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 10, eff. September 1, 2013.

Sec. 401.304. ACCEPTANCE AND ADMINISTRATION OF FUNDS. The department and commission each may accept and administer conditional or other loans, grants, gifts, or other funds from the federal government or other sources to carry out their respective functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995.

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT. (a) The radiation and perpetual care account is an account in the general revenue fund.

(b) The department shall deposit to the credit of the perpetual care account money and security it receives under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

(c) Money and security in the perpetual care account may be administered by the department only for storage, maintenance, and distribution of mammography medical records or the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the

environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department.

(e) The department may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department to meet the requirements of this chapter or of department rules;

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation; and

(3) to protect the health and safety of mammography patients by assuring mammography medical records are made available to affected patients.

(f) The department may provide, by the terms of a contract or lease entered into between the department and any person, by the terms of a mammography certification issued by the department to any person, or by the terms of a license issued to any person, for the storage, maintenance, and distribution of mammography medical records. The department may provide, by the terms of a contract or lease entered into between the department and any person or by the terms of a license issued by the department to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department liable for the costs of storage, maintenance, and distribution of mammography medical records arising from a mammography certification holder's failure to store, maintain, and make available mammography medical records or for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 146, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.235, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 25, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 515 (S.B. 1082), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 11, eff. September 1, 2013.

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or



of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches \$100 million. The fees are reinstated when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to \$50 million or less.

(b) The surcharge collected under Section 401.207(g) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches \$2 million. If the amount in that account attributable to those fees is reduced to \$1.5 million or less, the fee is reinstated until the amount reaches \$2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account attributable to those fees reaches \$500,000. If the amount in that account attributable to those fees is reduced to \$350,000 or less, the fee is reinstated until the amount reaches \$500,000.

(e) This section does not relieve a generator from liability for a transportation accident involving low-level radioactive waste.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

#### **SUBCHAPTER I. COURT PROCEEDINGS**

Sec. 401.341. JUDICIAL REVIEW. A person who is affected by a final decision of the department and who has exhausted all administrative remedies available in the appropriate agency is entitled to judicial review under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 48, eff. Sept. 1, 1997.

Sec. 401.342. SUIT BY ATTORNEY GENERAL. (a) The attorney general, at the request of the department regarding an activity under its jurisdiction, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter or a rule, license, registration, or order adopted or issued by the department under this chapter. The attorney general may determine the court in which suit will be instituted.

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the perpetual care account, if applicable;

(2) civil penalties as provided by Section 401.381; or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 49, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 19, eff. Sept. 1, 2003.

Sec. 401.343. RECOVERY OF SECURITY. (a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances resulting from a violation of this chapter relating to an activity under the jurisdiction of the department or commission or a violation of a rule, license, registration, or order adopted or issued by the department or commission under this chapter.

(b) On request by the department or commission, the attorney general shall file suit to recover security under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 50, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 20, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 26, eff. June 15, 2007.

#### **SUBCHAPTER J. ENFORCEMENT**

Sec. 401.381. GENERAL CIVIL PENALTIES. (a) A person who causes, suffers, allows, or permits a violation of this chapter, a department rule or order, or a license or registration condition is subject to a civil penalty of not less than \$100 or more than \$25,000 for each violation and for each day that a continuing violation occurs.

(b) The attorney general may file suit to recover a civil penalty under this section in a district court in Travis County or in

the county in which the violation occurred. If the attorney general seeks to recover civil penalties for violations that have occurred in more than one county, the attorney general may join all of the violations in one suit and may file the suit either in a district court in Travis County or in a district court in a county in which at least one of the violations occurred.

(c) The civil penalty provided by this section is cumulative of any other remedy provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.237, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 5, eff. Sept. 1, 2001.

Sec. 401.382. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than the offense described by Section 401.383.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.383. CRIMINAL PENALTY FOR CERTAIN ACTS RELATED TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, unless it is shown at the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is punishable by a fine of not less than \$2,000 or more than \$100,000, confinement in the county jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 37, eff. Sept. 1, 1999; Acts

2001, 77th Leg., ch. 1420, Sec. 10.003, eff. Sept. 1, 2001.

Sec. 401.384. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty as provided by this section and Sections 401.385-401.390 against a person who causes, suffers, allows, or permits a violation of a provision of this chapter relating to an activity under the department's jurisdiction, a rule or order adopted by the department under this chapter, or a condition of a license or registration issued by the department under this chapter.

(b) The penalty for each violation may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or registration issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the public health or safety;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matters that justice requires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.238, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 6, eff. Sept. 1, 2001.

Sec. 401.385. PRELIMINARY REPORT OF VIOLATION. If the department, after an investigation, concludes that a violation relating to an activity under its jurisdiction has occurred, the department may issue a preliminary report:

- (1) stating the facts that support the conclusion;
- (2) recommending that an administrative penalty under Section 401.384 be imposed; and
- (3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the

facts surrounding the violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.239, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 53, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 7, eff. Sept. 1, 2001.

Sec. 401.386. NOTICE OF PRELIMINARY REPORT. (a) The department shall give written notice of its preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued.

(b) The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the recommended penalty amount; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is sent, the person charged may consent in writing to the report, including the recommended penalty, or make a written request for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.240, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 54, eff. Sept. 1, 1997.

Sec. 401.387. CONSENT TO PENALTY. (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the commissioner or the commissioner's designee, by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and that person must pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1072, Sec. 55, eff. Sept. 1, 1997.

Sec. 401.388. HEARING AND DECISION. (a) If the person charged requests a hearing, the commissioner shall order a hearing and shall give notice of that hearing.

(b) The hearing shall be held by a hearing examiner designated by the commissioner.

(c) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess an administrative penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)-(d) are subject to Chapter 2001, Government Code.

(f) The commissioner shall give notice to the person charged of the commissioner's decision, and if the commissioner finds that a violation has occurred and an administrative penalty has been assessed, the commissioner shall give to the person charged written notice of:

- (1) the commissioner's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commissioner's order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 56, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 8, eff. Sept. 1, 2001.

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the

amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) send the amount of the penalty to the commissioner for placement in an escrow account; or

(2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(c) The commissioner may request enforcement by the attorney general if the person charged fails to comply with this section.

(d) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Subchapter G, Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 57, eff. Sept. 1, 1997.

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS.

(a) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the commissioner shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the commissioner under Section 401.389(a) and ending on the date the penalty is remitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 58, eff. Sept. 1, 1997.

Sec. 401.393. COMMISSION ENFORCEMENT. The commission may enforce the provisions of this chapter under the commission's jurisdiction as provided by Chapter 7, Water Code.



Added by Acts 1997, 75th Leg., ch. 1072, Sec. 59, eff. Sept. 1, 1997.

**SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS**

Sec. 401.412. COMMISSION LICENSING AUTHORITY. (a)

Notwithstanding any other provision of this chapter and subject to Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter, the commission has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or disposal of by-product material under Subchapter G.

(c) The commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the board.

(d) The commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter.

(e) The commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facilities in the state that uses special nuclear material. The amount of the fees collected may not exceed the actual expenses that arise from emergency response activities, including training.

(f) The commission shall establish by rule the amounts appropriate for the fees collected under this section. The fees collected under this section shall be deposited in the waste management account and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept.

1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 75, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 13, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 28, eff. June 15, 2007.

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the commission and not from the department.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 14, eff. June 20, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 29, eff. June 15, 2007.

Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas Commission on Environmental Quality, the Health and Human Services Commission, and the Railroad Commission of Texas by rule shall adopt memoranda of understanding defining their respective duties under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 30, eff. June 15, 2007.

Sec. 401.415. OIL AND GAS NORM WASTE. (a) Notwithstanding any other provision of this chapter, the Railroad Commission of Texas:

(1) has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and

(2) may, in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to:

(A) determine whether the equipment contains or is

contaminated with oil and gas NORM waste; and

(B) identify any equipment determined to contain or be contaminated with oil and gas NORM.

(b) The Railroad Commission of Texas may adopt any rules reasonably necessary to exercise its authority under this section.

(c) The Railroad Commission of Texas may enforce this section or any rule, order, license, or permit adopted or issued under this section in the manner and subject to the conditions provided in Title 3 of the Natural Resources Code, including the authority to seek and obtain civil penalties and injunctive relief as provided in that title.

(d) The Railroad Commission of Texas shall consult with the department and the Texas Natural Resource Conservation Commission as appropriate regarding administration of this section.

(e) To ensure that the State of Texas retains its Agreement Status with the U.S. Nuclear Regulatory Commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste and in so doing shall consult with the Texas Natural Resource Conservation Commission and the Department of Health regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 2, 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(29), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 276, Sec. 1, eff. May 22, 2001.

#### **SUBCHAPTER L. CERTIFICATION OF MAMMOGRAPHY SYSTEMS**

Sec. 401.421. DEFINITIONS. In this subchapter:

(1) "Certification" means an authorization for the use of a mammography system.

(2) "Mammography" means the use of radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(3) "Mammography system" includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements adopted by board rule relating to, the reading, evaluation, and interpretation of mammograms.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.422. CERTIFICATION REQUIRED. (a) A person may not perform mammography unless the mammography system used has been issued a certification under this subchapter.

(b) A certification under Subsection (a) is required in addition to any license, registration, or other requirement under this chapter.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. July 1, 1994.

Sec. 401.423. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) prescribe application forms for original and renewal certifications;

(2) adopt rules for the administration of this subchapter; and

(3) take other action necessary to enforce this subchapter.

(b) The department shall apply under the Mammography Quality

Standards Act of 1992 (42 U.S.C. Section 263b) to become an accreditation body and carry out the certification program requirements and to implement the standards established by the United States Secretary of Health under that Act in this state. If the United States Secretary of Health grants the department's application, the department shall assume those responsibilities.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 1, eff. Sept. 1, 1997.

Sec. 401.424. MAMMOGRAPHY CERTIFICATION STANDARDS. (a) To receive a mammography certification under this subchapter, the mammography system must, at a minimum:

(1) meet criteria at least as stringent as the American College of Radiology mammography accreditation program;

(2) be specifically designed and used for the performance of mammography;

(3) be operated by an individual certified as a medical radiologic technologist under Chapter 601, Occupations Code, who meets, at a minimum, the requirements for personnel who perform mammography established by the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b); and

(4) be used in a facility that:

(A) meets, at minimum, the requirements for certification of the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b);

(B) has a licensed medical physicist specialized in radiology under Chapter 602, Occupations Code, who at least annually provides on-site consultation to the facility, including a complete evaluation of the entire mammography system to ensure compliance with this subchapter;

(C) maintains records of the consultations required under Paragraph (B) for not less than seven years after the date the consultation was performed;

(D) establishes a quality control program that meets requirements that are at least as stringent as those of the American College of Radiology mammography accreditation program; and

(E) maintains and makes available to a patient of the facility original mammograms performed at the facility until the

earlier of either:

(i) the fifth anniversary of the mammography or, if an additional mammogram of the same patient is not performed by the facility, the 10th anniversary of the mammography; or

(ii) at the request of the patient, the date the patient's medical records are forwarded to another medical institution.

(b) To protect the public health, the board by rule may adopt more stringent or additional requirements for:

(1) the certification of mammography systems; and

(2) the retention of original mammograms.

(c) To protect the public health, the board by rule shall adopt qualifications for a physician who reads, evaluates, and interprets a mammogram that are no less stringent than the standards of the American College of Radiology.

(d) The board shall make available to the public copies of the criteria of the American College of Radiology mammography accreditation program or the modified criteria adopted by board rule.

(e) Notwithstanding any other provision of this chapter, the standards imposed for certification under this chapter may not be less stringent than the standards imposed on a facility under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b).

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1997, 75th Leg., ch. 759, Sec. 2, eff. Sept. 1, 1997;  
Acts 2001, 77th Leg., ch. 1420, Sec. 14.792, eff. Sept. 1, 2001.

Sec. 401.426. APPLICATION FOR CERTIFICATION. (a) A person who owns, leases, or uses or the agent of a person who owns, leases, or uses a mammography system must file a written application for certification under Section 401.424 on a form prescribed by the board.

(b) The department may require, at any time after an application is filed, further information from the applicant and conduct inspections necessary to determine whether the application for certification should be granted or denied.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1997, 75th Leg., ch. 759, Sec. 3, eff. Sept. 1, 1997.

Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A certification is valid for three years.

(b) The board by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The board shall set and collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the board shall pay the annual fee and a late fee set by the board. The board may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the board. If the certification is not renewed before the 181st day after the date on which the certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the board has not been made.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(57), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 759, Sec. 4, eff. Sept. 1, 1997.

Sec. 401.428. DENIAL, SUSPENSION, REVOCATION, OR REINSTATEMENT OF CERTIFICATION. (a) The department may deny, suspend, revoke, or reinstate a certification.

(b) The board shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

(c) Proceedings relating to the suspension or revocation of a

certification issued under this subchapter are subject to Chapter 2001, Government Code.

(d) A person whose certification has been revoked may apply for a new certification on the expiration of one year after the date the certification was revoked.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 401.429. CERTIFICATION FOR MULTIPLE MAMMOGRAPHY SYSTEMS.

(a) An applicant for certification under Section 401.426 must obtain a separate certification for each mammography system that is owned, leased, or used by the applicant.

(b) Certification of multiple mammography systems by a single applicant may be recorded on a single certification document. If multiple mammography systems are recorded on a single certification document, each specific machine certified, if any, must be identified on the certification document by referring to the machine's manufacturer, model number, and serial number.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.430. INSPECTIONS. (a) The department shall inspect each mammography system that has not been fully certified under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) not later than the 60th day after the date the certification under this subchapter is issued.

(b) The board by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(c) The department shall make reasonable attempts to coordinate inspections under this section with other inspections required under this chapter for the facility where the mammography system is used.

(d) After each satisfactory inspection, the department shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:



- (1) specifically identify the mammography system inspected;
- (2) state the name and address of the facility where the mammography system was used at the time of the inspection; and
- (3) state the date of the inspection.

(e) A notice of a mammography system's failure to satisfy department standards shall be posted:

- (1) on the mammography system at a conspicuous place if the system is a machine; or
- (2) near the place where the mammography system practices if the system is an individual.

(f) If a facility's mammography system fails to meet the department's certification standards and the failure is a Severity Level I violation under the department's rules, the facility shall notify each patient on whom the facility performed a mammography during the period in which the system failed to meet the department's certification standards. The facility shall:

- (1) inform the patient that the mammography system failed to satisfy the department's certification standards;
- (2) recommend that the patient consult with the patient's physician regarding the need for another mammogram; and
- (3) list the three facilities closest to the original testing facility that have a certified mammography system.

(g) In addition to the requirement of Subsection (f), the department may require a facility to notify a patient of any other failure of the facility's mammography system to meet the department's certification standards.

(h) To protect the public health, the board may adopt rules concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 5, eff. Sept. 1, 1997;  
Acts 2001, 77th Leg., ch. 1009, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1355 (S.B. 527), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER M. LASER HAIR REMOVAL**

Sec. 401.501. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of State Health Services.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (3) "Laser hair removal" means the use of a laser or pulsed light device for nonablative hair removal procedures.
- (4) "Laser hair removal facility" means a business location that provides laser hair removal.
- (5) "Laser or pulsed light device" means a device approved by the department and the United States Food and Drug Administration for laser hair removal.
- (6) "Nonablative hair removal procedure" means a hair removal procedure using a laser or pulsed light device that does not remove the epidermis.
- (7) "Operator" means the owner of a laser hair removal facility, an agent of an owner, or an independent contractor of a laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.502. EXAMINATION. The executive commissioner may adopt rules to govern the development and administration of an examination for an applicant under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.503. APPLICATION PROCESS. (a) An application for a certificate or license under this subchapter must be made on a form prescribed and provided by the department.

(b) The application must require an applicant to provide sworn statements relating to the applicant's education and to provide other information required by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) A person may not perform or attempt to perform laser hair removal unless the person holds the appropriate certificate under this subchapter.

(b) A certificate issued under this subchapter only authorizes a person to perform nonablative cosmetic laser hair removal. The certificate does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect, or deformity of the human body. The certificate holder shall specifically disclose this limitation in writing to all clients and prospective clients.

(c) This subchapter does not require a health professional licensed under another law to hold a certificate under this subchapter to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

(d) This subchapter does not apply to a physician or to a physician's employee or delegate acting under Chapter 157, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL. (a) An applicant for a laser hair removal professional certificate must:

- (1) be certified by a recognized certifying agency, including the Society for Clinical and Medical Hair Removal or another certification entity approved by the department;
- (2) meet the requirements for a senior laser hair removal technician certificate under Section 401.506; and
- (3) pass an examination administered by the department.

(b) A certified laser hair removal professional acting under the protocol established with a consulting physician may perform laser hair removal without supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a)

Except as provided by Subsection (b), an applicant for a senior laser hair removal technician certificate must:

- (1) meet the requirements for a laser hair removal technician certificate under Section 401.507; and
- (2) have supervised at least 100 laser hair removal procedures, as audited by a certified laser hair removal professional.

(b) The qualifications for eligibility for an applicant for a senior laser hair removal technician certificate who is a licensed health professional shall be established by the entity that issues licenses for that health profession.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.507. LASER HAIR REMOVAL TECHNICIAN. An applicant for a laser hair removal technician certificate must:

- (1) meet the requirements for a laser hair removal apprentice-in-training certificate under Section 401.508; and
- (2) have performed at least 100 laser hair removal procedures under the direct supervision of a senior laser hair removal technician or a certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.508. LASER HAIR REMOVAL APPRENTICE-IN-TRAINING. (a) An applicant for a laser hair removal apprentice-in-training certificate must have at least 24 hours of training in safety, laser physics, skin typing, skin reactions, treatment protocols, burns, eye protection, emergencies, and posttreatment protocols.

(b) A laser hair removal apprentice-in-training must work directly under the supervision of a senior laser hair removal technician or a certified laser hair removal professional.

(c) A person must be at least 18 years of age to qualify to be a laser hair removal apprentice-in-training.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.509. CONTINUING EDUCATION. The department shall recognize, prepare, or administer continuing education programs for certificate holders. A certificate holder must participate in the programs to the extent required by department rule to renew the person's certificate.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may not operate a laser hair removal facility unless the person holds a license issued under this subchapter to operate the facility.

(b) A separate license is required for each laser hair removal facility.

(c) This section does not apply to:

- (1) a facility owned or operated by a physician for the practice of medicine;
- (2) a licensed hospital; or
- (3) a clinic owned or operated by a licensed hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.511. EXPIRATION OF CERTIFICATE OR LICENSE. The executive commissioner by rule may adopt a system under which certificates and licenses expire on various dates during the year.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE. (a) A certificate or license expires on the second anniversary of the date of issuance.

(b) A person must renew the person's certificate or license on or before the expiration date.

(c) The department shall issue a renewal certificate or license

on receipt of a renewal application in the form prescribed by the department, accompanied by a renewal fee in an amount equal to the original certificate or license fee.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person holding a license or certificate under this subchapter shall display the person's license or certificate in an open public area of the laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.514. LASER OR PULSED LIGHT DEVICE. (a) A laser or pulsed light device used for laser hair removal in a laser hair removal facility must comply with all applicable federal and state laws and regulations.

(b) A person who adulterates or misbrands a laser or pulsed light device violates Chapter 431. The department may investigate a person accused of adulterating or misbranding a laser or pulsed light device.

(c) A person may only use a laser or pulsed light device approved for laser hair removal by the federal Food and Drug Administration for that purpose and may only use the device at the settings expected to safely remove hair.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair removal facility shall give each customer a written statement outlining the relevant risks associated with laser hair removal, including a warning that failure to use the eye protection provided to the customer by the laser hair removal facility may result in damage to the eyes.

(b) The executive commissioner shall adopt rules relating to

the customer notice.

(c) Compliance with the notice requirement does not affect the liability of the laser hair removal facility operator or a manufacturer of a laser or pulsed light device.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.516. WARNING SIGNS. (a) A laser hair removal facility shall post a warning sign as prescribed by the department in a conspicuous location readily visible to a person entering the facility. The sign must provide a toll-free telephone number for the department and inform the customer that the customer may call the department.

(b) The executive commissioner shall adopt rules specifying the size, content, and design of the sign, with wording listing the potential dangers involved.

(c) The department shall include with a license application and an application for renewal of a license a description of the design standards required for a sign under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as provided by Subsection (b), a laser hair removal facility shall have a certified laser hair removal professional or a licensed health professional described by Section 401.504(c) present to supervise the laser hair removal procedures performed at the facility during the facility's operating hours.

(b) A laser hair removal facility may continue to perform laser hair removal procedures after the facility's certified laser hair removal professional leaves the facility if a senior laser hair removal technician is present to perform or supervise each procedure. Not later than the 45th day after the date the facility's certified laser hair removal professional leaves the facility:

(1) the facility's senior laser hair removal technician must become certified as a laser hair removal professional under Section 401.505; or

(2) the facility must hire a new certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.518. SAFETY. (a) A laser hair removal facility operator is responsible for maintaining the laser hair removal facility's compliance with the requirements of this subchapter and department rules relating to laser and pulsed light devices.

(b) A laser hair removal facility operator may not claim, advertise, or distribute promotional materials that claim that laser hair removal is free from risk or provides any medical benefit.

(c) A laser hair removal facility operator may not produce false or misleading advertising regarding the services offered at the facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair removal facility must have a written contract with a consulting physician to:

(1) establish proper protocols for the services provided at the facility; and

(2) audit the laser hair removal facility's protocols and operations.

(b) Under the rules of the department, a laser hair removal facility must document with the department the facility's contractual relationship with the consulting physician.

(c) The consulting physician must be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. If the consulting physician is unavailable for an emergency consultation, another designated physician must be available for the consultation with the facility relating to care for the client.

(d) This subchapter does not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.



Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may not disclose a customer record required to be kept by the department.

(b) An operator or other person may disclose a customer record if:

(1) the customer or a person authorized to act on behalf of the customer requests the record;

(2) the department, the Texas Medical Board, a health authority, or an authorized agent requests the record;

(3) the customer consents in writing to disclosure of the record to another person;

(4) the customer is a victim, witness, or defendant in a criminal proceeding and the record is relevant to that proceeding;

(5) the record is requested in a criminal or civil proceeding by court order or subpoena; or

(6) disclosure is otherwise required by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.521. PROHIBITED PRACTICE. (a) A person may not operate a laser or pulsed light device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the person is:

(1) a physician;

(2) acting under a physician's order; or

(3) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(b) A person who violates Subsection (a) is practicing medicine in violation of Subtitle B, Title 3, Occupations Code, and is subject to the penalties under that subtitle and under Section 401.522.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.522. ENFORCEMENT; PENALTIES. (a) The department may impose an administrative penalty on a person who violates this subchapter or a rule adopted under this subchapter. The amount of the penalty may not exceed \$5,000 for each violation.

(b) The department may suspend or revoke a license or certificate issued under this subchapter in addition to or instead of imposing a penalty under Subsection (a).

(c) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

#### **CHAPTER 403. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT**

Sec. 403.0005. DEFINITIONS. In this chapter:

(1) "Commission" means the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact.

(2) "Host state commissioner" means a person who is appointed from this state to serve on the commission under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 2, eff. September 1, 2011.

Sec. 403.001. MEMBERS OF COMMISSION. (a) The governor shall appoint six members to represent this state on the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact. One of the voting members of the compact commission shall be a legal resident of the host county.

(b) The governor may provide an alternate for each commissioner appointed under this section.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 1067, Sec. 21, eff. Sept. 1, 2003.

Sec. 403.002. TERMS OF COMMISSION MEMBERS; VACANCY. Host state

commissioners serve staggered six-year terms, with the terms of two host state commissioners expiring on September 1 of each odd-numbered year. A host state commissioner serves until a successor is appointed and qualified. A vacancy in the office of host state commissioner is filled for the unexpired term by appointment of the governor.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.003. OATH. A host state commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform the duties of commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.

Sec. 403.004. COMPENSATION. A host state commissioner is not entitled to compensation for performing the duties of host state commissioner but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of host state commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.005. POWERS AND DUTIES. The Texas Low-Level Radioactive Waste Disposal Compact Commission and the members of the commission have the powers and duties prescribed by the compact. The members of the commission are responsible for administering the provisions of the compact.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.

Sec. 403.0051. COMMISSION AS INDEPENDENT ENTITY. (a) The commission is an independent entity and not a program, department, or other division of, or administratively attached to, the Texas Commission on Environmental Quality.

(b) Money for the commission may not be appropriated as part of an appropriation for the Texas Commission on Environmental Quality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0053. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0054. APPLICABILITY OF SUNSET ACT. (a) The commission is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency subject to review under that chapter, but may not be abolished under that chapter.

(b) The commission shall be reviewed during each period in which the Texas Commission on Environmental Quality is reviewed.

(c) The commission shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the cost, and the commission shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0055. AUDIT. The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.006. TEXT OF COMPACT. The Texas Low-Level Radioactive Waste Disposal Compact reads as follows:

ARTICLE I. POLICY AND PURPOSE

Sec. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive waste. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

ARTICLE II. DEFINITIONS

Sec. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Act" means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(2) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission established in Article III of this compact.

(3) "Compact facility" or "facility" means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United

States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

(7) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(8) "Host state" means a party state in which a compact facility is located or is being developed. The state of Texas is the host state under this compact.

(9) "Institutional control period" means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Act (42 U.S.C. Section 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) "Management" means collection, consolidation, storage, packaging, or treatment.

(12) "Operator" means a person who operates a disposal facility.

(13) "Party state" means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and Vermont are initial party states under this compact.

(14) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(15) "Transporter" means a person who transports low-level radioactive waste.

### ARTICLE III. THE COMMISSION

Sec. 3.01. There is hereby established the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission

members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

Sec. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

Sec. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

Sec. 3.04. The commission shall:

(1) Compensate its members according to the host state's law.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the nonhost party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside of the state.

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

(9) Assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all nonhost party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from nonhost party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the nonhost party states in order to assure that over the life of this agreement shipments from the nonhost party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

Sec. 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount, and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the



commission shall be adopted in accordance with Chapter 2001, Government Code.

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

Sec. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

#### ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

Sec. 4.01. The host state shall develop and have full administrative control over the development, management, and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the nonhost party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

Sec. 4.02. Low-level radioactive waste generated within the

party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

Sec. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

Sec. 4.04. The host state shall do the following:

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the nonhost party states. Fees shall also be sufficient to reasonably support the activities of the commission.

(5) Submit an annual report to the commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

(6) Notify the commission immediately upon the occurrence of any event that could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at noncompact facilities.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level

radioactive waste in the host state.

Sec. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at the facility, including but not limited to the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each nonhost party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the commission's activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section 7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The determination of a majority of the arbitrators shall

be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 U.S.C. Sections 1 through 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the commission and host state:

(A) an accounting of waste shipped and proposed to be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

Sec. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

#### ARTICLE V. PARTY STATE CONTRIBUTIONS

Sec. 5.01. Each party state, except the host state, shall contribute a total of \$25 million to the host state. Payments shall be deposited in the host state treasury to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60th day after the date of congressional ratification of this compact, each nonhost party state shall pay to the host state \$12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each nonhost party state shall pay to the host state an additional \$12.5 million.

Sec. 5.02. As an alternative, the host state and the nonhost states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this

article.

#### ARTICLE VI. PROHIBITED ACTS AND PENALTIES

Sec. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.

Sec. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 C.F.R. Section 20.302.

Sec. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

#### ARTICLE VII. ELIGIBILITY; ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

Sec. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial nonhost party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the composition of the commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

Sec. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless

before the adjournment, the legislature enacts this compact.

Sec. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state's legislature, without the consent of the nonhost party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission; provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

Sec. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the nonhost party states may continue to use the facility during that time. The financial obligation of the nonhost party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any nonhost party state payment under Sections 4.05(5) and (6), of Article IV or Article V, the nonhost party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the nonhost party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

Sec. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the two-year period and shall not be entitled to any refund of payments previously made.

Sec. 7.06. Any party state that substantially fails to comply with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to Chapter 2001, Government Code, except that a party state may appeal the commission's revocation decision to

the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from the date such party state receives written notice from the commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

Sec. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro-rata share of the commission's expenses.

Sec. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of congress every five years after its effective date, pursuant to federal law.

Sec. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the nonhost party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health and Safety Code, as long as the modification does not impair the rights of the initial nonhost party states.

#### ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

Sec. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

Sec. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

Sec. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care, or any other activity relating to the compact facility. No nonhost party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care

relating to the compact facility. Except as otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners, and operators of the facility shall be liable for their acts, omissions, conduct, or relationships in accordance with applicable law. By entering into this compact and securing the ratification by congress of its terms, no party state acquires a potential liability under Section 5(d)(2)(C) of the Act (42 U.S.C. Section 2021e(d)(2)(C)) that did not exist prior to entering into this compact.

Sec. 8.04. If a party state withdraws from the compact pursuant to Section 7.03 of Article VII or has its membership in this compact revoked pursuant to Section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

Sec. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.); or

(2) an agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2021).

Sec. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States



Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

#### **SUBTITLE F. LIGHT POLLUTION**

##### **CHAPTER 425. REGULATION OF CERTAIN OUTDOOR LIGHTING**

Sec. 425.001. DEFINITIONS. In this chapter:

(1) "Cutoff luminaire" means a luminaire in which 2.5% or less of the lamp lumens are emitted above a horizontal plane through the luminaire's lowest part and 10% or less of the lamp lumens are emitted at a vertical angle 80 degrees above the luminaire's lowest point.

(2) "Light pollution" means the night sky glow caused by the scattering of artificial light in the atmosphere.

(3) "Outdoor lighting fixture" means any type of fixed or movable lighting equipment that is designed or used for illumination outdoors. The term includes billboard lighting, street lights, searchlights and other lighting used for advertising purposes, and area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft.

(4) "State funds" means:

- (A) money appropriated by the legislature; or
- (B) bond revenues of the state.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999.  
Renumbered from Sec. 421.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(76), eff. Sept. 1, 2001.

Sec. 425.002. STANDARDS FOR STATE-FUNDED OUTDOOR LIGHTING FIXTURES. (a) An outdoor lighting fixture may be installed, replaced, maintained, or operated using state funds only if:

- (1) the new or replacement outdoor lighting fixture is a

cutoff luminaire if the rated output of the outdoor lighting fixture is greater than 1,800 lumens;

(2) the minimum illuminance adequate for the intended purpose is used with consideration given to nationally recognized standards;

(3) for lighting of a designated highway of the state highway system, the Texas Department of Transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or informational signs, or other effective passive methods; and

(4) full consideration has been given to energy conservation, reducing glare, minimizing light pollution, and preserving the natural night environment.

(b) For purposes of Subsection (a)(4), "energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

(c) Subsection (a) does not apply if:

(1) a federal law, rule, or regulation preempts state law;

(2) the outdoor lighting fixture is used on a temporary basis because emergency personnel require additional illumination for emergency procedures;

(3) the outdoor lighting fixture is used on a temporary basis for nighttime work;

(4) special events or situations require additional illumination;

(5) the outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object; or

(6) a compelling safety interest exists that cannot be addressed by another method.

(d) Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999.  
Renumbered from Sec. 421.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(76), eff. Sept. 1, 2001.

**SUBTITLE G. ENVIRONMENTAL HEALTH****CHAPTER 427. TEXAS ENVIRONMENTAL HEALTH INSTITUTE**

Sec. 427.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Commission on Environmental Quality.
- (2) "Department" means the Department of State Health Services.
- (3) "Federal superfund site" means a site defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.
- (4) "Immediately surrounding area" means an area determined by the commission to have been significantly exposed to one or more pollutants from the identified site.
- (5) "Institute" means the Texas Environmental Health Institute.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.017, eff. September 1, 2009.

Sec. 427.002. TEXAS ENVIRONMENTAL HEALTH INSTITUTE. The commission shall enter into an agreement with the department to jointly establish the Texas Environmental Health Institute in order to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Sec. 427.003. PURPOSES. The purposes of the institute are to:

- (1) develop a statewide plan to identify health conditions, related or potentially related to environmental contamination, of residents of this state who live or have lived within the immediately surrounding area of a federal superfund site or a state superfund site;
- (2) develop a plan to promote and protect the health and safety of residents in immediately surrounding areas by preventing or

reducing their health risks from exposure to chemical and biological contaminants, radioactive materials, and other hazards in the environment and the workplace;

(3) develop a plan for informing and educating citizens in immediately surrounding areas about the identified health risks and ways to prevent or reduce exposure;

(4) identify private and federal funding opportunities for institute operations; and

(5) conduct, coordinate, or pursue funding for research concerning short-term and long-term impacts of exposure to environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Sec. 427.004. PROGRAMS. The commission and the department may establish at the institute any programs necessary to carry out the institute's established purposes under this chapter. The commission and the executive commissioner of the Health and Human Services Commission may contract with public or private entities to carry out the institute's purposes.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.018, eff. September 1, 2009.

Sec. 427.005. GIFTS AND GRANTS. The commission and the department may accept and administer gifts and grants to fund the institute from any individual, corporation, trust, or foundation or the United States, subject to limitations or conditions imposed by law.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

## **TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES**

**SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS**  
**CHAPTER 431. TEXAS FOOD, DRUG, AND COSMETIC ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, and Cosmetic Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.002. DEFINITIONS. In this chapter:

(1) "Advertising" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Animal feed," as used in Subdivision (23), in Section 512 of the federal Act, and in provisions of this chapter referring to those paragraphs or sections, means an article intended for use as food for animals other than man as a substantial source of nutrients in the diet of the animals. The term is not limited to a mixture intended to be the sole ration of the animals.

(3) "Authorized agent" means an employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

(4) "Board" means the Texas Board of Health.

(5) "Butter" means the food product usually known as butter that is made exclusively from milk or cream, or both, with or without common salt or additional coloring matter, and containing not less than 80 percent by weight of milk fat, after allowing for all tolerances.

(6)(A) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and

(ii) when added or applied to a food, drug, or cosmetic, or to the human body or any part of the human body, is capable, alone or through reaction with other substance, of imparting color. The term does not include any material exempted under the federal Act.

(B) "Color" includes black, white, and intermediate

grays.

(C) Paragraph (A) does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

(7) "Commissioner" means the commissioner of health.

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.);

(C) a drug subject to the provisions of Section 431.113(c)(1) or 431.112(j), or Section 503(b)(1) of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

(9) "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(10) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance,

and articles intended for use as a component of those articles. The term does not include soap.

(11) "Counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor.

(12) "Department" means the Texas Department of Health.

(13) "Device," except when used in Sections 431.003, 431.021(1), 431.082(g), 431.112(c) and 431.142(c), means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with Section 403(r) of the federal Act, and for which the claim is approved by the secretary, is not a drug solely because the label or labeling contains such a claim.

(15) "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(16) "Food" means:

- (A) articles used for food or drink for man;
- (B) chewing gum; and
- (C) articles used for components of any such article.

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

- (A) a pesticide chemical in or on a raw agricultural commodity;
- (B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (C) a color additive;
- (D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1907 (21 U.S.C. 603); or
- (E) a new animal drug.

(18) "Health authority" means a physician designated to administer state and local laws relating to public health.

(19) "Immediate container" does not include package liners.

(20) "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(21) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a



requirement made by or under authority of this chapter that any word, statement, or other information that appears on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of the article, or is easily legible through the outside container or wrapper.

(22) "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(23) "Manufacture" means:

(A) the process of combining or purifying food or packaging food for sale to a person at wholesale or retail, and includes repackaging, labeling, or relabeling of any food;

(B) the process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section 562.154, Occupations Code;

(C) the process of preparing, fabricating, assembling, processing, packing, repacking, labeling, or relabeling a device; or

(D) the making of any cosmetic product by chemical, physical, biological, or other procedures, including manipulation, sampling, testing, or control procedures applied to the product.

(24) "New animal drug" means any drug intended for use for animals other than man, including any drug intended for use in animal feed:

(A) the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of the drug (except that such an unrecognized drug is not deemed to be a "new animal drug" if at any time before June 25, 1938, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use);

(B) the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness

for use under those conditions, has become recognized but that has not, otherwise than in the investigations, been used to a material extent or for a material time under those conditions; or

(C) is composed wholly or partly of penicillin, streptomycin, chlorotetracycline, chloramphenicol, or bacitracin, or any derivative of those substances, unless:

(i) a published order of the secretary is in effect that declares the drug not to be a new animal drug on the grounds that the requirement of certification of batches of the drug, as provided by Section 512(n) of the federal Act, is not necessary to ensure that the objectives specified in Section 512(n)(3) of that Act are achieved; and

(ii) Paragraph (A) or (B) of this subdivision does not apply to the drug.

(25) "New drug" means:

(A) any drug, except a new animal drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof (except that such an unrecognized drug is not a "new drug" if at any time before May 26, 1985, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use); or

(B) any drug, except a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(26) "Official compendium" means the official United States Pharmacopoeia National Formulary, or any supplement to it.

(27) "Package" means any container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term includes wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. The term does not include:

(A) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to

manufacturers, packers, or processors, or to wholesale or retail distributors;

(B) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings do not bear printed matter relating to any particular commodity; or

(C) containers subject to the provisions of the Standard Barrel Act (Apple Barrels) (15 U.S.C. 231, 21 U.S.C. 20) or the Standard Barrel Act (Fruits and Vegetables) (15 U.S.C. 234-236).

(28) "Person" includes individual, partnership, corporation, and association.

(29) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), as now in force or as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(30) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(31) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(32) "Saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin.

(33) "Safe" refers to the health of humans or animals.

(34) "Secretary" means the secretary of the United States Department of Health and Human Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 149, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. [492](#)), Sec. 5, eff. September

1, 2005.

Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING LABELING OR ADVERTISING. If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or any combination of these, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof, or under such conditions of use as are customary or usual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 150, eff. Sept. 1, 1991.

Sec. 431.004. REPRESENTATION OF DRUG AS ANTISEPTIC. The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that the drug is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.005. PROVISIONS REGARDING SALE OF FOOD, DRUGS, DEVICES, OR COSMETICS. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.006. CERTAIN COMBINATION PRODUCTS. If the United States Food and Drug Administration determines, with respect to a product that is a combination of a drug and a device, that:

(1) the primary mode of action of the product is as a drug, a person who engages in wholesale distribution of the product is subject to licensure under Subchapter I; and

(2) the primary mode of action of the product is as a device, a distributor or manufacturer of the product is subject to licensure under Subchapter L.

Added by Acts 1999, 76th Leg., ch. 132, Sec. 1, eff. May 20, 1999.

Sec. 431.007. COMPLIANCE WITH OTHER LAW; MOLLUSCAN SHELLFISH. A person who is subject to this chapter and who handles molluscan shellfish, as that term is defined by Section 436.002, shall comply with Section 436.105.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 1, eff. June 18, 1999. Renumbered from Sec. 431.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(78), eff. Sept. 1, 2001.

Sec. 431.008. APPLICABILITY OF CHAPTER TO DISTRESSED OR RECONDITIONED MERCHANDISE AND CERTAIN LICENSED ENTITIES. (a) This chapter applies to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432 or that has been subject to reconditioning in accordance with Chapter 432.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 432.

(c) A person who holds a license under Chapter 432 and is engaging in conduct within the scope of that license is not required to hold a license as a wholesale drug distributor under Subchapter I, a food wholesaler under Subchapter J, or a device distributor under Subchapter L.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 1, eff. May 22, 2001.

Sec. 431.009. APPLICABILITY OF CHAPTER TO FROZEN DESSERTS. (a) This chapter applies to a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products subject to Chapter 440. A frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products is food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 440.

(c) A person who holds a license under Chapter 440 related to the manufacturing of a product regulated under that chapter and is engaging in conduct within the scope of that license is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.010. APPLICABILITY OF CHAPTER TO MILK AND MILK PRODUCTS. (a) This chapter applies to milk or a milk product subject to Chapter 435. Milk or a milk product is a food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a permit under Chapter 435.

(c) A person who holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and who is engaging in conduct within the scope of that permit is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. PROHIBITED ACTS**

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device,

or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment

in commerce and results in such article being adulterated or misbranded;

(1)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or



such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition;

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug

to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413;

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market;

(jj) the receipt of a prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise; or

(kk) the alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 151, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 440, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1047, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1138, Sec. 2, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 198, Sec. 2.71, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(i), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 1, eff. September 1, 2007.

Sec. 431.0211. EXCEPTION. Any provision of Section 431.021 that relates to a prescription drug does not apply to a prescription drug manufacturer, or an agent of a prescription drug manufacturer,

who is obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 2, eff. September 1, 2007.

Sec. 431.022. OFFENSE: TRANSFER OF PRODUCT CONTAINING EPHEDRINE. (a) A person commits an offense if the person knowingly sells, transfers, or otherwise furnishes a product containing ephedrine to a person 17 years of age or younger, unless:

(1) the actor is:

(A) a practitioner or other health care provider licensed by this state who has obtained, as required by law, consent to the treatment of the person to whom the product is furnished; or

(B) the parent, guardian, or managing conservator of the person to whom the product is furnished;

(2) the person to whom the product is furnished has had the disabilities of minority removed for general purposes under Chapter 31, Family Code; or

(3) the product is a drug.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a Class B misdemeanor.

(c) A product containing ephedrine that is not described in Subsection (a)(3) must be labeled in accordance with rules adopted by the Texas Department of Health to indicate that sale to persons 17 years of age or younger is prohibited.

Added by Acts 1999, 76th Leg., ch. 151, Sec. 1, eff. Sept. 1, 1999.

Sec. 431.023. LIMITED EXEMPTION FOR DISTRESSED FOOD, DRUGS, DEVICES, OR COSMETICS. In relation to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432, Sections 431.021(a), (c), and (d) do not prohibit:

(1) the introduction or delivery for introduction into commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(2) the receipt in commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(3) the holding of merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for resale to the ultimate consumer; or

(4) the reconditioning of the merchandise in accordance with Chapter 432.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 2, eff. May 22, 2001.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 431.041. DEFINITION. In this subchapter, "detained or embargoed article" means a food, drug, device, cosmetic, or consumer commodity that has been detained or embargoed under Section 431.048.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.042. INSPECTION. (a) To enforce this chapter, the commissioner, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times an establishment, including a factory or warehouse, in which a food, drug, device, or cosmetic is manufactured, processed, packed, or held for introduction into commerce or held after the introduction;

(2) enter a vehicle being used to transport or hold the food, drug, device, or cosmetic in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the establishment or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(b) The inspection of an establishment, including a factory, warehouse, or consulting laboratory, in which a prescription drug or restricted device is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug or device:

- (1) is adulterated or misbranded;
  - (2) may not be manufactured, introduced into commerce, sold, or offered for sale under this chapter; or
  - (3) is otherwise in violation of this chapter.
- (c) An inspection under Subsection (b) may not extend to:
- (1) financial data;
  - (2) sales data other than shipment data;
  - (3) pricing data;
  - (4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter;
  - (5) research data other than data:
    - (A) relating to new drugs, antibiotic drugs, and devices; and
    - (B) subject to reporting and inspection under regulations issued under Section 505(i) or (j), 519, or 520(g) of the federal Act; or
  - (6) data relating to other drugs or devices that, in the case of a new drug, would be subject to reporting or inspection under regulations issued under Section 505(j) of the federal Act.
- (d) An inspection under Subsection (b) shall be started and completed with reasonable promptness.
- (e) This section does not apply to:
- (1) a pharmacy that:
    - (A) complies with Subtitle J, Title 3, Occupations Code;
    - (B) regularly engages in dispensing prescription drugs or devices on prescriptions of practitioners licensed to administer the drugs or devices to their patients in the course of their professional practice; and
    - (C) does not, through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process a drug or device for sale other than in the regular course of its business of dispensing or selling drugs or devices at retail;
  - (2) a practitioner licensed to prescribe or administer a drug who manufactures, prepares, propagates, compounds, or processes the drug solely for use in the course of the practitioner's professional practice;
  - (3) a practitioner licensed to prescribe or use a device who manufactures or processes the device solely for use in the course

of the practitioner's professional practice; or

(4) a person who manufactures, prepares, propagates, compounds, or processes a drug or manufactures or processes a device solely for use in research, teaching, or chemical analysis and not for sale.

(f) The board may exempt a class of persons from inspection under this section if the board finds that inspection as applied to the class is not necessary for the protection of the public health.

(g) An authorized agent or health authority who makes an inspection under this section to enforce the provisions of this chapter applicable to infant formula shall be permitted, at all reasonable times, to have access to and to copy and verify records:

(1) in order to determine whether the infant formula manufactured or held in the inspected facility meets the requirements of this chapter; or

(2) that are required by this chapter.

(h) An authorized agent or health authority who makes an inspection of an establishment, including a factory or warehouse, and obtains a sample during or on completion of the inspection and before leaving the establishment, shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.793, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 2, eff. Sept. 1, 2003.

Sec. 431.043. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or Section 519 or 520(g) of the federal Act or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.044. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE.

(a) To enforce this chapter, a carrier engaged in commerce or other person receiving a food, drug, device, or cosmetic in commerce or holding a food, drug, device, or cosmetic received in commerce shall,

at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times to have access to and to copy all records showing:

- (1) the movement in commerce of the food, drug, device, or cosmetic;
- (2) the holding of the food, drug, device, or cosmetic after movement in commerce; and
- (3) the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

(b) The carrier or other person may not refuse access to and copying of the requested record if the request is accompanied by a written statement that specifies the nature or kind of food, drug, device, or cosmetic to which the request relates.

(c) Evidence obtained under this section or evidence that is directly or indirectly derived from the evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence is obtained.

(d) A carrier is not subject to other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a food, drug, device, or cosmetic in the usual course of business as a carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.045. EMERGENCY ORDER. (a) The commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the manufacture or distribution of a food, drug, device, or cosmetic in the department's jurisdiction if the commissioner or the person designated by the commissioner determines that:

- (1) the manufacture or distribution of the food, drug, device, or cosmetic creates or poses an immediate and serious threat to human life or health; and
- (2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or a person designated by the commissioner may issue the emergency order without notice and hearing if the commissioner or a person designated by the commissioner determines



this is practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the board's formal hearing rules.

(d) This section prevails over Sections 11.013 and 12.001.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 629, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 2, eff. Sept. 1, 2001.

Sec. 431.046. VIOLATION OF RULES. A violation of a rule adopted under this chapter is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.047. VIOLATION; INJUNCTION. (a) The commissioner, an authorized agent, or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation of Subchapter B or a threat of a continuing violation of Subchapter B if the commissioner, authorized agent, or health authority finds that:

(1) a person has violated, is violating, or is threatening to violate Subchapter B; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition of the commissioner, an authorized agent, or a health authority, and on a finding by the court that a person is violating or threatening to violate Subchapter B shall grant any injunctive relief warranted by the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

(d) The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses. The expenses recovered by the commissioner are hereby appropriated to the

department for the administration and enforcement of this chapter. The expenses recovered by the attorney general are hereby appropriated to the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 3, eff. Sept. 1, 1991.

Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The commissioner or an authorized agent shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the commissioner or the authorized agent finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) violates Section 431.084, 431.114, or 431.115.

(b) The tag or marking on a detained or embargoed article must warn all persons not to use the article, remove the article from the premises, or dispose of the article by sale or otherwise until permission for use, removal, or disposal is given by the commissioner, the authorized agent, or a court.

(c) A person may not use a detained or embargoed article, remove a detained or embargoed article from the premises, or dispose of a detained or embargoed article by sale or otherwise without permission of the commissioner, the authorized agent, or a court. The commissioner or the authorized agent may permit perishable goods to be moved to a place suitable for proper storage.

(d) The commissioner or an authorized agent shall remove the tag or other marking from an embargoed or detained article if the commissioner or an authorized agent finds that the article is not adulterated or misbranded.

(e) The commissioner or an authorized agent may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the commissioner or an authorized agent finds or has probable cause to believe that the

article cannot be adequately reconditioned in accordance with that chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 3, eff. May 22, 2001.

Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE.

(a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section 431.048, the commissioner or an authorized agent may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized use, removal, or disposal.

(b) The commissioner or an authorized agent may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

(c) The claimant of the article or the claimant's agent shall pay the costs of the transfer.

(d) The commissioner may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 152, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 282, Sec. 3, eff. Sept. 1, 1997.

Sec. 431.0495. RECALL ORDERS. (a) In conjunction with the issuance of an emergency order under Section 431.045 or the detention or embargo of an article under Section 431.048, the commissioner may order a food, drug, device, cosmetic, or consumer commodity to be recalled from commerce.

(b) The commissioner's recall order may require the articles to

be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 431.048(a) or in conjunction with the commissioner's issuance of an emergency order under Section 431.045.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner;

(3) is reversed by a court in an order denying condemnation under Section 431.050; or

(4) is set aside at the hearing provided to affirm, modify, or set aside an emergency order under Section 431.045.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 153, eff. Sept. 1, 1991.

Sec. 431.050. CONDEMNATION. An action for the condemnation of an article may be brought before a court in whose jurisdiction the article is located, detained, or embargoed if the article is adulterated, misbranded, or in violation of Section 431.084, 431.114, or 431.115.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.051. DESTRUCTION OF ARTICLE. (a) A court shall order the destruction of a sampled article or a detained or embargoed article if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant of the article shall pay the cost of the destruction of the article.

(d) The court shall tax against the claimant of the article or the claimant's agent all court costs and fees, and storage and other proper expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.052. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of an agent of the commissioner or an authorized agent if:

(1) the decree has been entered in the suit;

(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the commissioner or an authorized agent that the article no longer violates this chapter and that the expenses of the supervision are paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.053. CONDEMNATION OF PERISHABLE ARTICLES. (a) The commissioner or an authorized agent shall immediately condemn or render by any means unsalable as human food an article that is a

nuisance under Subsection (b) and that the commissioner or authorized agent finds in any room, building, or other structure or in a vehicle.

(b) Any meat, seafood, poultry, vegetable, fruit, or other perishable article is a nuisance if it:

- (1) is unsound;
- (2) contains a filthy, decomposed, or putrid substance; or
- (3) may be poisonous or deleterious to health or otherwise unsafe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.054. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) such other matters as justice may require.

(c) The penalty may not exceed \$25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 4, eff. Sept. 1, 1991.

Sec. 431.055. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that

a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the commissioner shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:

(A) send the amount of the penalty to the commissioner for placement in an escrow account; or

(B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

(1) remit to the person the appropriate amount of any

penalty payment plus accrued interest; or

(2) execute a release of the bond if the person has posted a bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.0585. CIVIL PENALTY. (a) At the request of the commissioner, the attorney general or a district, county, or city attorney shall institute an action in district court to collect a civil penalty from a person who has violated Section 431.021.

(b) The civil penalty may not exceed \$25,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous violations of Section 431.021;

(2) the seriousness of the violation;

(3) any hazard posed to the public health and safety by the violation; and

(4) demonstrations of good faith by the person charged.

(d) Venue for a suit brought under this section is in the city or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 154, eff. Sept. 1, 1991.

Sec. 431.059. CRIMINAL PENALTY; DEFENSES. (a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first



offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Subsection (a-2) or Section 431.021, as applicable, to establish criminal responsibility for the violation.

(a-1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(a-2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b) A person is not subject to the penalties of Subsection (a):

(1) for having received an article in commerce and having delivered or offered delivery of the article, if the delivery or offer was made in good faith, unless the person refuses to furnish on request of the commissioner, an authorized agent, or a health authority, the name and address of the person from whom the article was received and copies of any documents relating to the receipt of the article;

(2) for having violated Section 431.021(a) or (e) if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom the person received in good faith the article, to the effect that:

(A) in the case of an alleged violation of Section 431.021(a), the article is not adulterated or misbranded within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(i) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(1)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(1)(3) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the commissioner to furnish the commissioner the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

(d) A person is not subject to the penalties of Subsection (a) for a violation of Section 431.021 involving misbranded food if the violation exists solely because the food is misbranded under Section 431.082 because of its advertising, and a person is not subject to the penalties of Subsection (a) for such a violation unless the violation is committed with the intent to defraud or mislead.

(e) It is an affirmative defense to prosecution under Subsection (a) that the conduct charged is exempt, in accordance with Section 431.023, from the application of Section 431.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 155, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 265, Sec. 4, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(h), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 Sec. 14, eff. September 1, 2007.

Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney general, or a district, county, or municipal attorney to whom the commissioner, an authorized agent, or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay.

(b) The commissioner, the commissioner's authorized agent, or the attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The commissioner, the commissioner's authorized agent, or the attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 2, eff. Sept. 1, 1993.

Sec. 431.061. MINOR VIOLATION. This chapter does not require the commissioner, an authorized agent, or a health authority to

report for prosecution or the institution of proceedings under this chapter a minor violation of this chapter if the commissioner, authorized agent, or health authority believes that the public interest is adequately served by a suitable written notice or warning.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER D. FOOD

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health; or

(2) it:

(A) bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 431.161; or

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a); or

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a); provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 431.161(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 431.161 and Section 409 of the federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the

tolerance prescribed for the raw agricultural commodity; or

(D) is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the federal Act; or

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; or

(4) it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse; or

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the federal Act;

(b) if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(2) any substance has been substituted wholly or in part therefor; or

(3) damage or inferiority has been concealed in any manner; or

(4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(5) it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or

(6) it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Department of Agriculture, the Animal Plant Health Inspection Service (A.P.H.I.S.)

or by rules of the board;

(c) if it is, or it bears or contains, a color additive that is unsafe under Section 431.161(a); or

(d) if it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with rules of the board, the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of five percent by volume. Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:

(A) may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;

(B) must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";

(C) may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;

(D) may not be sold through a vending machine;

(E) must be labeled with a conspicuous, readily legible statement that the product contains not more than five percent alcohol by volume; and

(F) may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries; or

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter; and provided further, that the board may for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 439, Sec. 1, eff. Sept. 1, 1993.

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(e) if its container is so made, formed, or filled as to be misleading;

(f) if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules adopted by the board;

(g) if any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or rules of the board as provided by Section 431.245, unless:

- (1) it conforms to such definition and standard; and
- (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food;
  - (i) if it purports to be or is represented as:
    - (1) a food for which a standard of quality has been prescribed by federal regulations or rules of the board as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or
    - (2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or rules of the board as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;
  - (j) unless its label bears:
    - (1) the common or usual name of the food, if any; and
    - (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under Section 706(c) of the federal Act, other than those sold as such, may be designated as spices, flavorings, and colors, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by rules of the board;
  - (k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;
    - (l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable,



exemptions shall be established by rules of the board. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(n) if it is a product intended as an ingredient of another food and if used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(o) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under Section 706 of the federal Act;

(p) if its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1491 et seq.);

(q) if it contains saccharin, unless its label and labeling and retail display comply with the requirements of Sections 403(o) and 403(p) of the federal Act;

(r) if it contains saccharin and is offered for sale, but not for immediate consumption, at a retail establishment, unless the retail establishment displays prominently, where the food is held for sale, notice that is provided by the manufacturer of the food under Section 403(o)(2) of the federal Act for consumers concerning the information required by Section 403(p) of the federal Act to be on food labels and labeling;

(s)(1) if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A)(i) the serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food; or

(ii) if the use of the food is not typically

expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(B) the number of servings or other units of measure per container;

(C) the total number of calories in each serving size or other unit of measure that are:

(i) derived from any source; and

(ii) derived from fat;

(D) the amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under the federal Act; or

(2)(A) if it is a food distributed at retail in bulk display cases, or a food received in bulk containers, unless it has nutrition labeling prescribed by the secretary; and

(B) if the secretary determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

(i) that is served in restaurants or other establishments in which food is served for immediate human consumption or that is sold for sale or use in those establishments;

(ii) that is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in Subparagraph (i), that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(iii) that is an infant formula subject to Section 412 of the federal Act;

(iv) that is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b)); or

(v) that is described in Section 405, clause (2), of the federal Act;

(B) Subdivision (1) does not apply to the label of

a food if the secretary determines by regulation that compliance with that subdivision is impracticable because the package of the food is too small to comply with the requirements of that subdivision and if the label of that food does not contain any nutrition information;

(C) if the secretary determines that a food contains insignificant amounts of all the nutrients required by Subdivision (1) to be listed in the label or labeling of food, the requirements of Subdivision (1) do not apply to the food if the label, labeling, or advertising of the food does not make any claim with respect to the nutritional value of the food, provided that if the secretary determines that a food contains insignificant amounts of more than half the nutrients required by Subdivision (1) to be in the label or labeling of the food, the amounts of those nutrients shall be stated in a simplified form prescribed by the secretary;

(D) if a person offers food for sale and has annual gross sales made or business done in sales to consumers that is not more than \$500,000 or has annual gross sales made or business done in sales of food to consumers that is not more than \$50,000, the requirements of this subsection do not apply to food sold by that person to consumers unless the label or labeling of food offered by that person provides nutrition information or makes a nutrition claim;

(E) if foods are subject to Section 411 of the federal Act, the foods shall comply with Subdivisions (1) and (2) in a manner prescribed by the rules; and

(F) if food is sold by a food distributor, Subdivisions (1) and (2) do not apply if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food it sells;

(t) if it is a food intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food to a specific disease or condition of the human body, except as permitted by Section 403(r) of the federal Act; or

(u) if it is a food intended for human consumption and its label, labeling, and retail display do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient content and health claims.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 156, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 3, eff. Sept. 1, 1993.

Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as provided by Subsection (c), the board shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(b) Food labeling exemptions adopted under the federal Act apply to food in this state except as modified or rejected by rules adopted by the board.

(c) The board may not adopt rules under Subsection (a) to exempt foods from the labeling requirements of Sections 403(q) and (r) of the federal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 4, eff. Sept. 1, 1993.

Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH MICROORGANISMS. (a) The commissioner shall provide for the issuance of temporary permits to a manufacturer, processor, or packer of a class of food in any locality that provides conditions for the manufacture, processing, or packing for the class of food as necessary to protect the public health only if the commissioner finds after investigation that:

(1) the distribution in this state of a class of food may, because the food is contaminated with microorganisms during the manufacture, processing, or packing of the food in any locality, be injurious to health; and

(2) the injurious nature of the food cannot be adequately determined after the food has entered commerce.

(b) The board by rule shall establish standards and procedures for the enforcement of this section.

(c) During the period for which permits are issued for a class of food determined by the commissioner to be injurious under Subsection (a), a person may not introduce or deliver for introduction into commerce the food unless the person is a manufacturer, processor, or packer who has a permit issued by the commissioner as authorized by rules adopted under this section.

(d) The commissioner may immediately suspend a permit issued under this section if a condition of the permit is violated. An immediate suspension is effective on notice to the permit holder.

(e) A holder of a permit that has been suspended may at any time apply for the reinstatement of the permit. Immediately after a hearing and an inspection of the permit holder's establishment, the commissioner shall reinstate the permit if adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(f) A permit holder shall provide access to the permit holder's factory or establishment to an authorized agent to allow the agent to determine whether the permit holder complies with the conditions of the permit. Denial of access is grounds for suspension of the permit until the permit holder freely provides the access.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. DRUGS AND DEVICES**

Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device shall be deemed to be adulterated:

(a)(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and

purity characteristics, which it purports or is represented to possess; or

(3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it:

(A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or

(B) is a color additive, the intended use of which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or

(5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary;

(c) if it is not subject to the provision of Paragraph (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f)(1) if it is a class III device:

(A)(i) that is required by a regulation adopted under Section 515(b) of the federal Act to have an approval under that section of an application for premarket approval and that is not exempt from Section 515 as provided by Section 520(g) of the federal Act; and

(ii)(I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the United States Food and Drug Administration by the 90th day after the date of adoption of the regulation; or

(II) for which that application was filed and approval was denied or withdrawn, for which that notice was filed and was declared incomplete, or for which approval of the device under the protocol was withdrawn;

(B) that was classified under Section 513(f) of the federal Act into class III, which under Section 515(a) of the federal Act is required to have in effect an approved application for premarket approval, that is not exempt from Section 515 as provided by Section 520(g) of the federal Act, and that does not have the application in effect; or

(C) that was classified under Section 520(l) of the federal Act into class III, which under that section is required to have in effect an approved application under Section 515 of the federal Act, and that does not have the application in effect, except that:

(2)(A) in the case of a device classified under Section 513(f) of the federal Act into class III and intended solely for investigational use, Subdivision (1)(B) does not apply to the device during the period ending on the 90th day after the date of adoption of the regulations prescribing the procedures and conditions required by Section 520(g)(2) of the federal Act; and

(B) in the case of a device subject to a regulation adopted under Section 515(b) of the federal Act, Subdivision (1) does not apply to the device during the period ending on whichever of the following dates occurs later:

(i) the last day of the 30-day calendar month beginning after the month in which the classification of the device into class III became effective under Section 513 of the federal Act; or

(ii) the 90th day after the date of adoption of the regulation;

(g) if it is a banned device;

(h) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(i) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 440, Sec. 2, eff. Sept. 1, 1993.

Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d)(1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name



or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetid, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies,

then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(e) unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the regulations adopted by the secretary;

(f) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (d) as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (d) prevail;

(g) if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(h) if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(i) if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(j) if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules issued under Section 431.161(b);

(k) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (d), printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (d); and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(l) if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(m) if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

(n) if a trademark, trade name, or other identifying mark,

imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(o) in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Section 520(e) of the federal Act;

(p) in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(q) if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(r) if it is a device and there was a failure or refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 2, eff. Sept. 1, 2003.

Sec. 431.113. EXEMPTION FOR CERTAIN DRUGS AND DEVICES. (a)

The board is directed to adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by rules of the board.

(c)(1) A drug intended for use by man that:

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under Section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) on a written prescription of a practitioner licensed by law to administer such drug; or

(ii) on an oral prescription of such practitioner that is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act that results in a drug being misbranded while held for sale.

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (h)(2), and (h)(3), and the packaging requirements of Sections 431.112(f), (g), and (m), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the

patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

(3) A drug that is subject to Subdivision (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear at a minimum, the symbol "RX Only." A drug to which Subdivision (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 111, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 3, eff. Sept. 1, 2003.

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the Federal Food and Drug Administration is on file with the commissioner if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the Federal Food and Drug Administration a completed and signed "Notice of claimed investigational exemption for a new drug" form in accordance with 21 C.F.R. 312.1 (1980) and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act;

(2) to any drug that is licensed under the Public Health Services Act of July 1, 1944 (42 U.S.C. 201 et seq.); or

(3) to any drug approved by the commissioner by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 157, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 111, Sec. 6, eff. Sept. 1, 2003.

Sec. 431.115. NEW ANIMAL DRUGS. (a) A new animal drug shall, with respect to any particular use or intended use of the drug, be deemed unsafe for the purposes of this chapter unless:

(1) there is in effect an approval of an application filed pursuant to Section 512(b) of the federal Act with respect to the use or intended use of the drug; and

(2) the drug, its labeling, and the use conforms to the approved application.

(b) A new animal drug shall not be deemed unsafe for the purposes of this chapter if the article is for investigational use and conforms to the terms of an exemption in effect with respect thereto under Section 512(j) of the federal Act.

(c) This section does not apply to any drug:

(1) licensed under the virus-serum-toxin law of March 4, 1913 (21 U.S.C. 151-159);

(2) approved by the United States Department of Agriculture; or

(3) approved by the commissioner by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 158, eff. Sept. 1, 1991.

Sec. 431.116. AVERAGE MANUFACTURER PRICE. (a) In this section, "average manufacturer price" has the meaning assigned by 42 U.S.C. Section 1396r-8(k), as amended.

(b) A person who manufactures a drug, including a person who manufactures a generic drug, that is sold in this state shall file with the department:

(1) the average manufacturer price for the drug; and

(2) the price that each wholesaler in this state pays the manufacturer to purchase the drug.

(c) The information required under Subsection (b) must be filed annually or more frequently as determined by the department.

(d) The department and the attorney general may investigate the manufacturer to determine the accuracy of the information provided under Subsection (b). The attorney general may take action to enforce this section.

(e) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

(f) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section may be provided by the department only to the Medicaid vendor drug purchase program for its sole use. The Medicaid vendor drug purchase program may use the information only as necessary to administer its drug programs, including Medicaid drug programs.

(g) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section is confidential and, except as necessary to permit the attorney general to enforce state and federal laws, may not be disclosed by the Health and Human Services Commission or any other state agency in a form that discloses the identity of a specific manufacturer or labeler or the prices charged by a specific manufacturer or labeler for a specific drug.

(h) The attorney general shall treat information obtained under this section in the same manner as information obtained by the attorney general through a civil investigative demand under Section 36.054, Human Resources Code.

(i) Notwithstanding any other state law, the penalties for unauthorized disclosure of confidential information under Chapter 552, Government Code, apply to unauthorized disclosure of confidential information under this section.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 2, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.199, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. [1188](#)), Sec. 29, eff. September 1, 2007.

Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner of the Health and Human Services Commission shall study the wholesale



distribution of influenza vaccine in this state to determine the feasibility of implementing a system that requires giving a priority in filling orders for influenza vaccine to physicians and other licensed health care providers authorized to administer influenza vaccine over retail establishments. The executive commissioner may implement such a system if it is determined to be feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 2, eff. June 15, 2007.

#### **SUBCHAPTER F. COSMETICS**

Sec. 431.141. ADULTERATED COSMETIC. A cosmetic shall be deemed to be adulterated:

(a) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and Subsection (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) if it is not a hair dye and it is, or it bears or contains, a color additive that is unsafe within the meaning of Section 431.161(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and  
(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by rules adopted by the board;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section 706 of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined by Section 431.141(a); or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(2) The board shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the

practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by rules adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 159, eff. Sept. 1, 1991.

#### **SUBCHAPTER G. POISONOUS OR DELETERIOUS SUBSTANCES**

Sec. 431.161. POISONOUS OR DELETERIOUS SUBSTANCES. (a) Any poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of Section 431.081(a)(2) with respect to any food, Section 431.111(a) with respect to any drug or device, or Section 431.141 with respect to any cosmetic. However, if a rule adopted under Section 431.181 or Subsection (b) is in effect that limits the quantity of that substance, and if the use or intended use of that substance conforms to the terms prescribed by the rule, a food, drug, or cosmetic shall not, by reason of bearing or containing that substance in accordance with the rules, be considered adulterated within the meaning of Section 431.081(a)(1), 431.111, or 431.141.

(b) The board, whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The rule may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal

Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the board that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the board to determine whether the rules should be adopted, the board may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the board shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article because of the use of that substance; and

(C) the pure substance and all intermediates and impurities; and

(6) facts supporting a contention that the proposed use of that substance will serve a useful purpose.

(c) Notwithstanding Sections 11.013 and 12.001, the commissioner may adopt emergency rules under Chapter 2001, Government Code to establish tolerance levels of poisonous or deleterious

substances in food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

**SUBCHAPTER H. FAIR PACKAGING AND LABELING; FALSE ADVERTISING**

Sec. 431.181. FAIR PACKAGING AND LABELING. (a) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) and the regulations promulgated pursuant thereto; provided, that consumer commodities exempted from the requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (a), but nothing in this subsection shall prohibit supplemental statements at other places on the package describing in nondeceptive terms the net quantity of contents; provided, that the supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(d) Whenever the board determines that rules containing prohibitions or requirements other than those prescribed by Subsection (a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the board shall adopt with respect to that commodity rules effective to:

(1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose

any commodity;

(2) regulate the placement on any package containing any commodity, or on any label affixed to the commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of Section 431.002(15)) bear:

(A) the common or usual name of the consumer commodity, if any; and

(B) in case the consumer commodity consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional slack-fill of packages containing consumer commodities. For the purpose of this subdivision, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than:

(A) protection of the contents of the package; or

(B) the requirements of the machine used for enclosing the contents in the package.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.182. FALSE ADVERTISEMENT. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) The advertising of a food that incorporates a health claim not in conformance with or defined by Section 403(r) of the federal Act is deemed to be false or misleading for the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 5, eff. Sept. 1, 1993.

Sec. 431.183. FALSE ADVERTISEMENT OF DRUG OR DEVICE. (a) An advertisement of a drug or device is false if the advertisement represents that the drug or device affects:

- (1) infectious and parasitic diseases;
- (2) neoplasms;
- (3) endocrine, nutritional, and metabolic diseases and immunity disorders;
- (4) diseases of blood and blood-forming organs;
- (5) mental disorders;
- (6) diseases of the nervous system and sense organs;
- (7) diseases of the circulatory system;
- (8) diseases of the respiratory system;
- (9) diseases of the digestive system;
- (10) diseases of the genitourinary system;
- (11) complications of pregnancy, childbirth, and the puerperium;
- (12) diseases of the skin and subcutaneous tissue;
- (13) diseases of the musculoskeletal system and connective tissue;
- (14) congenital anomalies;
- (15) certain conditions originating in the perinatal period;
- (16) symptoms, signs, and ill-defined conditions; or
- (17) injury and poisoning.

(b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate Section 431.182 and is disseminated:

- (1) to the public for self-medication and is consistent with the labeling claims permitted by the federal Food and Drug Administration;
- (2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or
- (3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.

(c) The board by rule shall authorize the advertisement of a drug having a curative or therapeutic effect for a disease listed under Subsection (a) if the board determines that an advance in medical science has made any type of self-medication safe for the

disease. The board may impose conditions and restrictions on the advertisement of the drug necessary in the interest of public health.

(d) This section does not indicate that self-medication for a disease other than a disease listed under Subsection (a) is safe or effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 160, eff. Sept. 1, 1991.

#### **SUBCHAPTER I. WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS**

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Nonprescription drug" means any drug that is not a prescription drug as defined by Section 431.401.

(2) "Place of business" means each location at which a drug for wholesale distribution is located.

(3) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, or wholesaler.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(b), eff. March 1, 2006.

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of nonprescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(c), eff. March 1, 2006.

Sec. 431.202. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the department under this subchapter or Subchapter N.

(b) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the



department or electronically on the state electronic Internet portal.

(c) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 161, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 5, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(d), eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 28, eff. June 17, 2011.

Text of section as repealed by Acts 2005, 79th Leg., R.S., Ch. 282 (H.B. 164), Sec. 3 effective September 1, 2005

Sec. 431.2021. EXEMPTION FROM LICENSING.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 28 (S.B. 492), Sec. 6

(a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987, as amended (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act;

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration; or

(4) Section 562.154, Occupations Code.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this Act or the rules adopted by the board to administer and enforce this Act.

Added by Acts 1991, 72nd Leg., ch. 539, Sec. 6, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 375, Sec. 1, eff. June 2, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 6, eff. September

1, 2005.

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(k), eff. September 1, 2005.

Sec. 431.203. CONTENTS OF LICENSE STATEMENT. The license statement must contain:

- (1) the name under which the business is conducted;
- (2) the address of each place of business that is licensed;
- (3) the name and residence address of:
  - (A) the proprietor, if the business is a proprietorship;
  - (B) all partners, if the business is a partnership; or
  - (C) all principals, if the business is an association;
- (4) the date and place of incorporation, if the business is a corporation;
- (5) the names and residence addresses of the individuals in an administrative capacity showing:
  - (A) the managing proprietor, if the business is a proprietorship;
  - (B) the managing partner, if the business is a partnership;
  - (C) the officers and directors, if the business is a corporation; or
  - (D) the persons in a managerial capacity, if the business is an association; and
- (6) the residence address of an individual in charge of each place of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 7, eff. Sept. 1, 1991.

Sec. 431.2031. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this chapter

and the minimum standards adopted under this chapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state, if after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the board's rules.

(d) The department shall consider each licensing statement filed by a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Added by Acts 1991, 72nd Leg., ch. 539, Sec. 8, eff. Sept. 1, 1991.

Sec. 431.204. FEES. (a) The department shall collect fees for:

- (1) a license that is filed or renewed;
- (2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.206; and
- (3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

- (1) reviewing and acting on a license;
- (2) amending and renewing a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out the administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(e), eff. March 1, 2006.

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the licensee shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are deemed adequate if the licensee sends the notices by certified mail, return receipt requested, to the central office of the department or submits them electronically through the state electronic Internet portal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 29, eff. June 17, 2011.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the

illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this chapter or the rules implementing this chapter;

(6) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.

Sec. 431.208. REPORTING OF PURCHASE PRICE. (a) On the

department's request, a person who engages in the wholesale distribution of drugs in this state shall file with the department information showing the actual price at which the wholesale distributor sells a particular drug to a retail pharmacy.

(b) The department shall adopt rules to implement this section.

(c) The department and the attorney general may investigate the distributor to determine the accuracy of the information provided under Subsection (a). The attorney general may take action to enforce this section.

(d) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 29, eff. September 1, 2007.

#### **SUBCHAPTER J. FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS**

Sec. 431.221. DEFINITIONS. In this subchapter:

(1) "Place of business" means:

(A) each location where:

(i) a person manufactures food; or

(ii) food for wholesale is distributed; or

(B) a warehouse where food is stored.

(2) "Food manufacturer" means a person who combines, purifies, processes, or packages food for sale through a wholesale outlet. The term also includes a retail outlet that packages or labels food before sale and a person that represents itself as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address. The term does not include a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food manufacturer under this subdivision.

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include:

(A) a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership;

(B) an establishment engaged solely in the distribution of nonalcoholic beverages in sealed containers; or

(C) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food wholesaler under this subdivision.

(4) Deleted by Acts 1997, 75th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997

(5) "Direct seller" means an individual:

(A) who is not affiliated with a permanent retail establishment and who engages in the business of:

(i) in-person sales of prepackaged nonperishable foods, including dietary supplements, to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home; or

(ii) sales of prepackaged nonperishable foods, including dietary supplements, in a home;

(B) who receives substantially all remuneration for a service, whether in cash or other form of payment, which is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) who performs services under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to federal tax purposes.

(6) "Licensed nonprofit organization" means an organization that is licensed under any statutory authority of the State of Texas and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, as an organization described in Section 501(c)(3) of that code.

(7) "Warehouse operator" means a person that operates a warehouse where food is stored.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th

Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1378, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 334, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(51), eff. September 1, 2005.

Sec. 431.2211. APPLICATION OF SUBCHAPTER. (a) A person is not required to hold a license under this subchapter if the person is:

(1) a person, firm, or corporation that only harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest;

(2) an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller;

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

(4) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be required to hold a license under this subchapter.

(a-1) A person is not required to hold a license under this subchapter if the person holds a license under Chapter 440 and is engaging in conduct within the scope of that license.

(a-2) A person is not required to hold a license under this subchapter if the person holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and is engaging in conduct within the scope of that permit.

(b) An exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the board to administer and enforce those provisions.

(c) This subchapter does not apply to the distribution of beverages in sealed containers by holders of licenses or permits issued under Chapter 19, 20, 21, 23, 64, or 65, Alcoholic Beverage Code. The provisions of the Alcoholic Beverage Code prevail to the extent of any conflict with this chapter.



(d) A food wholesaler is not required to obtain a license under this subchapter for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this subchapter.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The department shall adopt rules for the registration of food wholesalers under this section.

Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 629, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1378, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 112, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 334, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 757, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 1, eff. September 1, 2012.

Sec. 431.222. LICENSE REQUIRED; LICENSING FEES. (a) Except as provided by Section 431.2211, a food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department each year a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

(b) The department shall require a food manufacturer that distributes only food manufactured by that firm to obtain only a license as a food manufacturer. A person that does not manufacture food and serves only as a food wholesaler must obtain only a food wholesaler's license. A person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license. A warehouse operator who also distributes food is required to obtain only a warehouse operator license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 162, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 7, eff. Sept. 1, 2003.

Sec. 431.223. CONTENTS OF LICENSE APPLICATION. (a) The person applying for a license under this subchapter must provide, at a minimum, the following information in a license application:

(1) the name under which the food manufacturer, wholesale distributor, or warehouse operator conducts business;

(2) the address of each place of business in this state that is licensed;

(3) if the food manufacturer, wholesale distributor, or warehouse operator is an individual, a partnership, or an association, the name or names of:

(A) the proprietor, if the business is a sole proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) if the food manufacturer, wholesale distributor, or wholesale operator is a corporation, the date and place of incorporation and the name and address of its registered agent in this state;

(5) the names and residences of the individuals in an administrative capacity, showing:

(A) the managing proprietor, if the business is a sole proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of a person in charge of each place of business.

(b) The license application must be signed, verified, and filed on a form furnished by the department according to the rules adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 8, eff. Sept. 1, 2003.

Sec. 431.224. FEES. (a) The board shall collect fees for:

- (1) a license that is filed or renewed;
- (2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.2251; and
- (3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The board may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:

- (1) reviewing and acting on a license;
- (2) amending and renewing a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) The department shall use not less than one-half of license fees collected for inspecting a licensed place of business or enforcing this subchapter, and the remainder for the administration of this subchapter.

(e) All license fees received by the department under this subchapter shall be deposited in the state treasury to the credit of the food and drug license fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 163, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.

Sec. 431.2245. PROCESSING OF LICENSING FEES. (a) The commissioner shall establish a system for processing licensing fees under this chapter, including vended water facility licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument

is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the commissioner in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 1, eff. Aug. 30, 1999.

Sec. 431.225. EXPIRATION DATE. (a) The board by rule may provide that licenses expire on different dates during the year.

(b) For the year in which the license expiration date is changed, license fees payable on or before September 1 shall be prorated so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 164, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.

Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not later than the 31st day before the date of the change, the license holder shall notify in writing the commissioner or the commissioner's designee of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the commissioner or the commissioner's designee the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the license holder provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.

Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner may refuse an application for a license or may suspend or revoke a license.

(b) The board by rule shall establish minimum standards for granting and maintaining a license. In adopting rules under this section, the board shall:

(1) ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases; and

(2) consider acceptable produce safety standards developed by a federal agency, state agency, or university.

(c) The refusal or the suspension or revocation of a license by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 2, eff. September 1, 2011.

Sec. 431.227. FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM. (a) The department shall approve food safety best practice education programs for places of business licensed under this chapter.

(b) A place of business that completes a food safety best practice education program approved by the department shall receive a certificate valid for five years from the date of completion of the program.

(c) When determining which places of business to inspect under Section 431.042, the appropriate inspecting authority shall consider whether the place of business holds a valid certificate from a food safety best practice education program under this section.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 3, eff. September 1, 2011.

**SUBCHAPTER K. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING  
AUTHORITY**

Sec. 431.241. RULEMAKING AUTHORITY. (a) The board may adopt rules for the efficient enforcement of this chapter.

(b) The board may conform its rules, if practicable, with regulations adopted under the federal Act.

(c) The enumeration of specific federal laws and regulations in Sections 431.244 and 431.245 does not limit the general authority granted to the board in Subsection (b) to conform its rules to those adopted under the federal Act.

(d) The board may adopt the federal regulations issued by the secretary pursuant to the Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331, 333, 353, and 381), as necessary or desirable so that the state wholesale drug distributor licensing program in Subchapter I of this chapter may achieve compliance with that Act.

(e) The board and the Texas Department of Human Services shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the United States Food and Drug Administration, in compliance with federal law and subject to review by the Texas Department of Human Services, Vendor Drug Advisory Subcommittee.

(f) Nothing in this section shall effect a prior approval program in operation on the effective date of this section nor shall any portion of this chapter prohibit a prior approval process on any federally exempted products.

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The board by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 675, Sec. 7, eff. Sept. 1, 1993.

Sec. 431.242. CONTESTED CASE HEARINGS AND APPEALS. A hearing

under this chapter or an appeal from a final administrative decision shall be conducted under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 431.243. PERSONS TO CONDUCT HEARINGS. The commissioner or an officer, agent, or employee designated by the commissioner shall conduct a hearing authorized or required under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES. (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the board modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the board modifies or rejects the rule. The board may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) and the regulations adopted under that Act.

(c) A regulation adopted by the secretary under Sections 403(b) through (i) of the federal Act is a rule for the purposes of this chapter unless the board modifies or rejects the rule. The board may not adopt a rule that conflicts with the limitations provided by Sections 403(q) and (r) of the federal Act.

(d) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the department has fulfilled the rulemaking provisions of Chapter 2001, Government Code.

(e) If the board modifies or rejects a federal regulation, the board shall comply with the rulemaking provisions of Chapter 2001,

Government Code.

(f) For any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a), (b), or (c), the Department of State Health Services shall provide on its Internet website:

- (1) a link to the text of the federal regulation;
- (2) a clear explanation of the substance of and purpose for the regulation; and
- (3) information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 4, eff. September 1, 2011.

Sec. 431.245. DEFINITION OR STANDARD OF IDENTITY, QUALITY, OR FILL OF CONTAINER. (a) A definition or standard of identity, quality, or fill of container of the federal Act is a definition or standard of identity, quality, or fill of container in this chapter, except as modified by board rules.

(b) The board by rule may establish definitions and standards of identity, quality, and fill of container for a food if:

- (1) a federal regulation does not apply to the food; and
- (2) the board determines that adopting the rules will promote honest and fair dealing in the interest of consumers.

(c) A temporary permit granted for interstate shipment of an experimental pack of food that varies from the requirements of federal definitions and standards of identity is automatically effective in this state under the conditions of the permit.

(d) The commissioner may issue additional permits if the commissioner determines that:

- (1) it is necessary for the completion of an otherwise adequate investigation; and



(2) the interests of consumers are safeguarded.

(e) A permit issued under Subsection (d) is subject to the terms and conditions of board rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The board shall adopt rules that provide a system for removing adulterated items from the shelves of a grocery store or other retail establishment selling those items.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.247. DELEGATION OF POWERS OR DUTIES. (a) The board by rule may delegate a power or duty imposed on the commissioner by this chapter to a designee of the board, including the power or duty to issue an emergency rule, an emergency manufacturing permit, or an order or to render a final administrative decision.

(b) A health authority may, unless otherwise restricted by law, delegate a power or duty imposed on the health authority by this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.2471. TEXAS DEPARTMENT OF HEALTH PEACE OFFICERS. (a) The department may employ a peace officer to administer and enforce this chapter.

(b) The department may not employ a peace officer under this section unless:

(1) the employee will enforce the food and drug portions of this chapter;

(2) the Texas Commission on Law Enforcement certifies the employee as qualified to be a peace officer;

(3) the commissioner recommends the employee to the department as being qualified to enforce the food and drug laws within the jurisdiction of the department; and

(4) the employee also serves simultaneously as the director of the food and drugs division of the department.

(c) A person employed as a peace officer under this section has the powers, privileges, and immunities of a peace officer while carrying out the employee's duties under this chapter.

Added by Acts 1993, 73rd Leg., ch. 339, Sec. 1, eff. Sept. 1, 1993.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.38, eff. May 18, 2013.

Sec. 431.248. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF AGRICULTURE. (a) The department and the Department of Agriculture shall execute a memorandum of understanding that:

(1) requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and

(2) specifies how each agency will assist the other in performing its duties regarding pesticides in food.

(b) The department and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

(c) The department and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The commissioner may publish reports summarizing the judgments, decrees, and court orders rendered under this chapter, including the nature and disposition of the charge.

(b) The commissioner may disseminate information regarding a food, drug, device, or cosmetic in a situation that the commissioner determines to involve imminent danger to health or gross deception of consumers.

(c) This section does not prohibit the commissioner from collecting, reporting, and illustrating the results of an investigation by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER L. DEVICE DISTRIBUTORS AND MANUFACTURERS**

Sec. 431.271. DEFINITIONS. In this subchapter:

(1) "Distributor" means a person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labelling of the finished device or the finished device package.

(2) "Finished device" means a device, or any accessory to a device, that is suitable for use, without regard to whether it is packaged or labelled for commercial distribution.

(3) "Importer" means any person who initially distributes a device imported into the United States.

(4) "Manufacturer" means a person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished device.

(5) "Place of business" means each location at which a finished device is manufactured or held for distribution.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1, 1995.

Sec. 431.272. LICENSE REQUIRED; MINIMUM STANDARDS. (a) Except as provided by Section 431.273, a person may not operate as a distributor or manufacturer of devices in this state unless the person has a license from the commissioner for each place of business.

(b) A distributor or manufacturer of devices in this state must comply with the minimum requirements specified in the federal Act and in this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1,

1995.

Sec. 431.273. EXEMPTION FROM LICENSING. (a) A person is exempt from licensing under this subchapter if the person engages only in the following types of device distribution:

- (1) intracompany sales;
- (2) distribution from a place of business located outside of this state; or
- (3) the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act).

(a-1) A person is exempt from licensing under this subchapter if the person holds a registration certificate issued under Chapter 266, Occupations Code, and engages only in conduct within the scope of that registration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted by the board to administer and enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 3, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 302 (H.B. 1395), Sec. 1, eff. September 1, 2013.

Sec. 431.274. LICENSE APPLICATION. (a) A person applying for a license under this subchapter shall provide, at a minimum, the following information on a license application form furnished by the commissioner:

- (1) the name under which the business is conducted;
- (2) the address of each place of business that is licensed;
- (3) the name and residence address of:
  - (A) the proprietor, if the business is a proprietorship;
  - (B) all partners, if the business is a partnership; or

- (C) all principals, if the business is an association;
  - (4) the date and place of incorporation if the business is a corporation;
  - (5) the names and residence addresses of the individuals in an administrative capacity showing:
    - (A) the managing proprietor, if the business is a proprietorship;
    - (B) the managing partner, if the business is a partnership;
    - (C) the officers and directors, if the business is a corporation; or
    - (D) the persons in a managerial capacity, if the business is an association; and
  - (6) the residence address of an individual in charge of each place of business.
- (b) The license application must be signed, verified, and completed in a manner described in the rules adopted by the board.
- (c) A person applying for a license under this subchapter must pay a licensing fee for each place of business.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.

Sec. 431.275. ADVISORY COMMITTEE. (a) The board shall appoint a committee to:

- (1) advise the board in the development of standards and procedures relating to the licensing of distributors and manufacturers of devices under this subchapter;
- (2) make recommendations to the board relating to the content of the rules adopted to implement this subchapter; and
- (3) perform any other functions requested by the board in implementing and administering this subchapter.

(b) The advisory committee is composed of:

- (1) one person representing a distributor of devices;
- (2) two persons representing manufacturers of devices; and
- (3) two public members.

(c) A person is not eligible for appointment as a public member if the person or the person's spouse:

- (1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a manufacturer or distributor of devices, by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a manufacturer or distributor of devices or a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a manufacturer or distributor of devices or a health care facility, corporation, or agency; or

(5) would qualify for appointment under Subsection (b)(1) or (2).

(d) The advisory committee members serve staggered three-year terms.

(e) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(f) A member of the advisory committee is not entitled to compensation, but is entitled to reimbursement of the member's travel expenses as provided in the General Appropriations Act for state employees.

(g) The advisory committee may elect a chair, vice chair, and secretary from among its members and may adopt rules for the conduct of its own activities.

(h) The advisory committee will have an opportunity to review and comment on the board's rules to carry out this subchapter before the rules are proposed.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 4, eff. Sept. 1, 1995.

Sec. 431.276. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including notification of a change of location of a licensed place of business required under Section 431.278, a change of the name of an association or corporation, or a change in the ownership of the licensee; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The board may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:

- (1) reviewing and acting on a license or renewal license;
- (2) amending a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) At least half of the licensing fees collected shall be used to inspect an applicant or licensed place of business.

(e) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and may be appropriated to the department only to carry out this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.

Sec. 431.277. LICENSE EXPIRATION. (a) The board by rule may provide that licenses expire on different dates during the year.

(b) If the board changes a license expiration date, the board shall prorate the license fee payable on or before September 1 so that the licensee is required to pay only that portion of the fee that is allocable to the number of months during which the license is valid.

(c) The total renewal license fee is payable when the license is renewed on the new expiration date.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.

Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the commissioner or the commissioner's designee in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the date of completion of the change of location, the licensee shall notify the commissioner or the commissioner's designee in writing to verify the change of

location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address.

(c) Notice is adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.

Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or

(5) has not complied with this chapter or the board's rules implementing this chapter.

(b) The commissioner may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or



(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The refusal to license an applicant or the suspension or revocation of a license by the commissioner and the appeal from that action are governed by the board's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

#### **SUBCHAPTER M. DRUG DONATION PROGRAM**

Sec. 431.321. DEFINITIONS. (a) "Charitable medical clinic" means a clinic, including a licensed pharmacy that is a community pharmaceutical access program provider, that provides medical care or drugs without charge or for a substantially reduced charge, complies with the insurance requirements of Chapter 84, Civil Practice and Remedies Code, and is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code and is operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

(b) "Seller" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(c) "Manufacturer" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(d) "Charitable drug donor" means a licensed convalescent or nursing home or related institution, licensed hospice, hospital, physician, pharmacy, or a pharmaceutical seller or manufacturer that donates drugs pursuant to a qualified patient assistance program, that donates drugs to a charitable medical clinic.

(d-1) In this subchapter, "community pharmaceutical access program" means a program offered by a licensed pharmacy under which the pharmacy assists financially disadvantaged persons to access prescription drugs at no charge or at a substantially reduced charge.

(e) In this subchapter, "patient assistance program" means a qualified program offered by a pharmaceutical manufacturer under which the manufacturer provides drugs to financially disadvantaged persons at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 820 (S.B. 1896), Sec. 2, eff. June 15, 2007.

Sec. 431.322. DONATION OF UNUSED DRUGS TO CHARITABLE MEDICAL CLINIC. (a) A charitable drug donor may donate certain unused prescription drugs to a charitable medical clinic, and a charitable clinic may accept, dispense, or administer the donated drugs in accordance with this subchapter.

(b) A seller or manufacturer of a drug may not donate drugs to a charitable medical clinic except pursuant to a qualified patient assistance program. A seller or manufacturer of a drug that donates drugs through a qualified patient assistance program shall be considered a charitable drug donor.

(c) The charitable drug donor shall use appropriate safeguards established by the board to ensure that the drugs are not compromised or illegally diverted while being stored or transported to the charitable medical clinic.

(d) The charitable medical clinic may not accept the donated drugs unless:

(1) the charitable drug donor certifies that the drugs have been properly stored while in the possession of the donor or of the person for whom the drugs were originally dispensed;

(2) the charitable drug donor provides the clinic with a verifiable address and telephone number; and

(3) the person transferring possession of the drugs presents the charitable medical clinic with photographic identification.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

Sec. 431.323. CIRCUMSTANCES UNDER WHICH DONATED DRUGS MAY BE

ACCEPTED AND DISPENSED. (a) A charitable medical clinic may accept and dispense or administer donated drugs only in accordance with this subchapter.

(b) The donated drugs must be drugs that require a prescription. A donated drug may not be a controlled substance under Chapter 481.

(c) The donated drugs must be approved by the federal Food and Drug Administration and:

(1) be sealed in the manufacturer's unopened original tamper-evident packaging and either:

(A) individually packaged; or

(B) packaged in unit-dose packaging;

(2) be oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(3) be topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(4) be parenteral medication in sealed multiple-dose containers approved by the federal Food and Drug Administration from which no doses have been withdrawn; and

(5) must not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(d) The charitable medical clinic may dispense or administer the donated drugs only:

(1) before the expiration date or within the recommended shelf life of the donated drugs, as applicable; and

(2) after a licensed pharmacist has determined that the drugs are of an acceptable integrity.

(e) The donated drugs may be accepted and dispensed or administered by the charitable medical clinic only in accordance with rules adopted by the department.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

Sec. 431.324. RULES. The department shall adopt rules to implement this subchapter that are designed to protect the public health and safety.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

Sec. 431.325. LIMITATION ON LIABILITY. (a) Charitable drug donors, charitable medical clinics, and their employees are not liable for harm caused by the accepting, dispensing, or administering of drugs donated in strict compliance with this subchapter unless the harm is caused by:

(i) willful or wanton acts of negligence;

(ii) conscious indifference or reckless disregard for the safety of others; or

(iii) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer pursuant to Chapter 82, Civil Practice and Remedies Code.

(c) This section shall not apply where harm results from the failure to fully and completely comply with the requirements of this subchapter.

(d) This section shall not apply to a charitable medical clinic that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

#### **SUBCHAPTER N. WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS**

Sec. 431.401. DEFINITIONS. In this subchapter:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree for the drug has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products in accordance with Section 431.4011.

(3) "Pharmacy warehouse" means a location for which a person holds a wholesale drug distribution license under this subchapter, that serves as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(3-a) "Co-licensed product partner" means one of two or more parties that have the right to engage in the manufacturing or marketing of a prescription drug consistent with the United States Food and Drug Administration's regulations and guidances implementing

the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293).

(3-b) "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or by the manufacturer's co-licensed product partner, third-party logistics provider, or exclusive distributor, in which:

(A) the wholesale distributor takes title but not physical possession of the prescription drug;

(B) the wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient; and

(C) the pharmacy, pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer or the manufacturer's third-party logistics provider or exclusive distributor.

(4) "Logistics provider" means a person that receives prescription drugs only from the original manufacturer, delivers the prescription drugs at the direction of that manufacturer, and does not purchase, sell, trade, or take title to any prescription drug.

(4-a) "Manufacturer" means a person licensed or approved by the United States Food and Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal agency's definition of "manufacturer" under the agency's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293). The term does not include a pharmacist engaged in compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section 562.154, Occupations Code.

(4-b) "Manufacturer's exclusive distributor" means a person who holds a wholesale distributor license under this subchapter, who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who takes title to, but does not have general responsibility to direct the sale or disposition of, the manufacturer's prescription drug. A manufacturer's exclusive distributor must be an authorized distributor of record to be considered part of the normal distribution channel.

(5) "Normal distribution channel" means a chain of custody for a prescription drug, either directly or by drop shipment, from the manufacturer of the prescription drug, the manufacturer to the

manufacturer's co-licensed product partner, the manufacturer to the manufacturer's third-party logistics provider, or the manufacturer to the manufacturer's exclusive distributor, to:

- (A) a pharmacy to:
  - (i) a patient; or
  - (ii) another designated person authorized by law to dispense or administer the drug to a patient;
- (B) an authorized distributor of record to:
  - (i) a pharmacy to a patient; or
  - (ii) another designated person authorized by law to dispense or administer the drug to a patient;
- (C) an authorized distributor of record to a wholesale distributor licensed under this chapter to another designated person authorized by law to administer the drug to a patient;
- (D) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy;
- (E) a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy or another designated person authorized by law to dispense or administer the drug to a patient;
- (F) a person authorized by law to prescribe a prescription drug that by law may be administered only under the supervision of the prescriber; or
- (G) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use.

(6) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of a prescription drug, from sale by a manufacturer, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the prescription drug.

(7) "Place of business" means each location at which a drug for wholesale distribution is located.

(8) "Prescription drug" has the meaning assigned by 21 C.F.R. Section 203.3.

(9) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient.

(10) "Repackager" means a person who engages in

repackaging.

(10-a) "Third-party logistics provider" means a person who holds a wholesale distributor license under this subchapter, who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be an authorized distributor of record to be considered part of the normal distribution channel.

(11) "Wholesale distribution" means distribution of prescription drugs to a person other than a consumer or patient. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product;

(B) the sale, purchase, distribution, trade, or transfer of prescription drugs or the offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, or charitable institution in accordance with 21 C.F.R. Section 203.23;

(E) the sale of reasonable quantities by a retail pharmacy of a prescription drug to a licensed practitioner for office use;

(F) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(G) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(H) the sale, purchase, or trade of a drug, or the offer to sell, purchase, or trade a drug, for emergency medical reasons, including a transfer of a prescription drug by a retail

pharmacy to another retail pharmacy to alleviate a temporary shortage;

(I) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug; or

(J) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor.

(12) "Wholesale distributor" means a person engaged in the wholesale distribution of prescription drugs, including a manufacturer, repackager, own-label distributor, private-label distributor, jobber, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, authorized distributor of record, drug wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third-party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 3, eff. June 19, 2009.

Sec. 431.4011. ONGOING RELATIONSHIP. In this subchapter, "ongoing relationship" means an association that exists when a manufacturer and distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute the manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff.



March 1, 2006.

Sec. 431.4012. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of prescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.402. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of prescription drugs in this state unless the person holds a wholesale drug distribution license under this subchapter for each place of business.

(b) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.403. EXEMPTION FROM LICENSING. (a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted under this chapter to administer and enforce the other provisions of this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4031. EXEMPTION FROM CERTAIN PROVISIONS FOR CERTAIN WHOLESAL E DISTRIBUTORS. (a) A wholesale distributor that distributes prescription drugs that are medical gases or a wholesale distributor that is a manufacturer or a third-party logistics provider on behalf of a manufacturer is exempt from Sections 431.404(a)(5) and (6), (b), and (c), 431.4045(2), 431.405, 431.407, and 431.408.

(b) A state agency or a political subdivision of this state that distributes prescription drugs using federal or state funding to nonprofit health care facilities or local mental health or mental retardation authorities for distribution to a pharmacy, practitioner, or patient is exempt from Sections 431.405(b), 431.407, 431.408, 431.412, and 431.413.

(c) The executive commissioner of the Health and Human Services Commission by rule may exempt specific purchases of prescription drugs by state agencies and political subdivisions of this state if the executive commissioner determines that the requirements of this subchapter would result in a substantial cost to the state or a political subdivision of the state.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 4, eff. June 19, 2009.

Sec. 431.404. LICENSE APPLICATION. (a) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department. The application must contain:

(1) the name, full business address, and telephone number of the applicant;

(2) all trade or business names under which the business is conducted;

(3) the address, telephone number, and name of a contact person for each of the applicant's places of business;

(4) the type of business entity and:

(A) if the business is a sole proprietorship, the name of the proprietor;

(B) if the business is a partnership, the name of the partnership and each of the partners; or

(C) if the business is a corporation, the name of the corporation, the place of incorporation, and the name and title of each corporate officer and director;

(5) the name and telephone number of, and any information necessary to complete a criminal history record check on, a designated representative of each place of business; and

(6) a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs.

(b) Each person listed in Subsection (a)(5) shall provide the following to the department:

(1) the person's places of residence for the past seven years;

(2) the person's date and place of birth;

(3) the person's occupations, positions of employment, and offices held during the past seven years;

(4) the business name and address of any business, corporation, or other organization in which the person held an office under Subdivision (3) or in which the person conducted an occupation or held a position of employment;

(5) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license or a criminal proceeding and the nature and disposition of the proceeding;

(6) a statement of whether during the preceding seven years the person has been enjoined, either temporarily or permanently, by a court from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, including the details concerning the event;

(7) a written description of any involvement by the person as an officer or director with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(8) a description of any misdemeanor or felony offense for

which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(9) a description of any criminal conviction of the person under appeal, a copy of the notice of appeal for that criminal offense, and a copy of the final written order of an appeal not later than the 15th day after the date of the appeal's disposition; and

(10) a photograph of the person taken not earlier than 180 days before the date the application was submitted.

(c) The information submitted under Subsection (b) must be attested to under oath.

(d) An applicant or license holder shall submit to the department any change in or correction to the information required under this section in the form and manner prescribed by the department.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 5, eff. September 1, 2007.

Sec. 431.4045. INSPECTION REQUIRED. The department may not issue a wholesale distributor license to an applicant under this subchapter unless the department:

(1) conducts a physical inspection of the place of business at the address provided by the applicant under Section 431.404 or determines that an inspection is unnecessary after thoroughly evaluating the information in the application, the compliance history of the applicant and the applicant's principals, and the risk of counterfeiting in the applicant's product; and

(2) determines that the designated representative of the place of business meets the qualifications required by Section 431.405.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 6, eff. September 1, 2007.

Sec. 431.405. QUALIFICATIONS FOR LICENSE. (a) The department

may not issue a wholesale distributor license to an applicant without considering the minimum federal information and related qualification requirements published in federal regulations at 21 C.F.R. Part 205, including:

- (1) factors in reviewing the qualifications of persons who engage in wholesale distribution, 21 C.F.R. Section 205.6;
- (2) appropriate education and experience for personnel employed in wholesale distribution, 21 C.F.R. Section 205.7; and
- (3) the storage and handling of prescription drugs and the establishment and maintenance of prescription drug distribution records, 21 C.F.R. Section 205.50.

(b) In addition to meeting the minimum federal requirements as provided by Subsection (a), to qualify for the issuance or renewal of a wholesale distributor license under this subchapter, the designated representative of an applicant or license holder must:

- (1) be at least 21 years of age;
- (2) have been employed full-time for at least three years by a pharmacy or a wholesale distributor in a capacity related to the dispensing or distributing of prescription drugs, including recordkeeping for the dispensing or distributing of prescription drugs;
- (3) be employed by the applicant full-time in a managerial-level position;
- (4) be actively involved in and aware of the actual daily operation of the wholesale distributor;
- (5) be physically present at the applicant's place of business during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;
- (6) serve as a designated representative for only one applicant at any one time, except in a circumstance, as the department determines reasonable, in which more than one licensed wholesale distributor is colocated in the same place of business and the wholesale distributors are members of an affiliated group, as defined by Section 1504, Internal Revenue Code of 1986;
- (7) not have been convicted of a violation of any federal, state, or local laws relating to wholesale or retail prescription drug distribution or the distribution of controlled substances; and
- (8) not have been convicted of a felony under a federal, state, or local law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 7, eff. September 1, 2007.

Sec. 431.406. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this subchapter and the minimum standards adopted under this subchapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state if, after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the rules adopted under this subchapter.

(d) The department shall consider each license application and any related documents or reports filed by or in connection with a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.407. CRIMINAL HISTORY RECORD INFORMATION. The department shall submit to the Department of Public Safety the fingerprints provided by a person with an initial or a renewal license application to obtain the person's criminal history record information and may forward the fingerprints to the Federal Bureau of Investigation for a federal criminal history check.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.408. BOND. (a) A wholesale distributor applying for or renewing a license shall submit payable to this state a bond or other equivalent security acceptable to the department, including an irrevocable letter of credit or a deposit in a trust account or financial institution, in the amount of \$100,000 payable to this state.

(a-1) A pharmacy warehouse that is not engaged in wholesale distribution is exempt from the bond requirement under Subsection (a).

(b) The bond or equivalent security submitted under Subsection (a) shall secure payment of any fines or penalties imposed by the department or imposed in connection with an enforcement action by the attorney general, any fees or other enforcement costs, including attorney's fees payable to the attorney general, and any other fees and costs incurred by this state related to that license holder, that are authorized under the laws of this state and that the license holder fails to pay before the 30th day after the date a fine, penalty, fee, or cost is assessed.

(c) The department or this state may make a claim against a bond or security submitted under Subsection (a) before the first anniversary of the date a license expires or is revoked under this subchapter.

(c-1) A single bond is sufficient to cover all places of business operated by a wholesale distributor in this state.

(d) The department shall deposit the bonds and equivalent securities received under this section in a separate account.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 8, eff. September 1, 2007.

Sec. 431.409. FEES. (a) The department shall collect fees for:

- (1) a license that is filed or renewed;
- (2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.410; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

- (1) reviewing and acting on a license;
- (2) amending and renewing a license;
- (3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4095. RENEWAL NOTIFICATION; CHANGE OR RENEWAL. (a) Before the expiration of a license issued under this subchapter, the department shall send to each licensed wholesale distributor a form containing a copy of the information the distributor provided to the department under Section 431.404.

(b) Not later than the 30th day after the date the wholesale distributor receives the form under Subsection (a), the wholesale distributor shall identify and state under oath to the department any change in or correction to the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 9, eff. September 1, 2007.

Sec. 431.410. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the license holder shall notify the department in writing of the license holder's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.



(c) Not more than 10 days after the completion of the change of location, the license holder shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are considered adequate if the license holder sends the notices by certified mail, return receipt requested, to the central office of the department or submits the notices electronically through the state electronic Internet portal.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 30, eff. June 17, 2011.

Sec. 431.411. MINIMUM RESTRICTIONS ON TRANSACTIONS. (a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or pharmacy warehouse. An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third-party returns processor. The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under Section 431.412 if the returns or exchanges are exempt from pedigree under:

(1) Section 503, Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

(a-1) Each wholesale distributor and pharmacy shall administer the process of drug returns and exchanges to ensure that the process is secure and does not permit the entry of adulterated or counterfeit drugs into the distribution channel.

(a-2) Notwithstanding any provision of state or federal law to the contrary, a person that has not otherwise been required to obtain a wholesale license under this subchapter and that is a pharmacy engaging in the sale or transfer of expired, damaged, returned, or recalled prescription drugs to the originating wholesale distributor or manufacturer and pursuant to federal statute, rules, and regulations, including the United States Food and Drug Administration's applicable guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293), is exempt from wholesale licensure requirements under this subchapter.

(b) A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed by the appropriate state licensing authorities or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(c) Except as otherwise provided by this subsection, prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established; and

(2) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the

date of delivery to the pharmacy receiving area.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 10, eff. September 1, 2007.

Sec. 431.412. PEDIGREE REQUIRED. (a) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer, shall provide a pedigree for each prescription drug for human consumption that leaves or at any time has left the normal distribution channel and is sold, traded, or transferred to any other person.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b-1) A retail pharmacy or pharmacy warehouse is required to comply with this section only if the pharmacy or warehouse engages in the wholesale distribution of a prescription drug.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(d) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, but excluding the original manufacturer of the finished form of a prescription drug, and who is in possession of a pedigree for a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 eff. September 1, 2007.

Sec. 431.413. PEDIGREE CONTENTS. (a) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering

the drug. At a minimum, the chain of distribution information must include:

(1) the name, address, telephone number, and, if available, the e-mail address of each person who owns the prescription drug and each wholesale distributor of the prescription drug;

(2) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(3) the transaction dates; and

(4) certification that each recipient has authenticated the pedigree.

(b) The pedigree must include, at a minimum, the:

(1) name of the prescription drug;

(2) dosage form and strength of the prescription drug;

(3) size of the container;

(4) number of containers;

(5) lot number of the prescription drug; and

(6) name of the manufacturer of the finished dosage form.

(c) Each pedigree statement must be:

(1) maintained by the purchaser and the wholesale distributor for at least three years; and

(2) available for inspection and photocopying not later than the second business day after the date a request is submitted by the department or a peace officer in this state.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

(e-1) If, after consulting with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drugs in this state, the department determines that electronic track and trace pedigree technology is universally available across the entire prescription pharmaceutical supply chain, the department shall establish a targeted implementation date for electronic track and trace pedigree technology. After the department has established a targeted implementation date, the department may revise the date. The targeted implementation date may not be earlier than July 1, 2010.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 12, eff.

September 1, 2007.

Sec. 431.414. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(a-1) The commissioner of state health services may suspend or revoke a license if the license holder no longer meets the qualifications for obtaining a license under Section 431.405.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The department shall deny a license application that is

incomplete, contains false, misleading, or incorrect information, or contains information that cannot be verified by the department.

(d) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 13, eff. September 1, 2007.

Sec. 431.415. ORDER TO CEASE DISTRIBUTION. (a) The commissioner of state health services shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(b) An order under Subsection (a) must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(c) If, after providing an opportunity for a hearing, the commissioner of state health services determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

## CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT

Sec. 432.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.002. PURPOSE. The purpose of this chapter is to protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.003. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.
- (4) "Department" means the Texas Department of Health.
- (5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.
- (6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by board rule and judicial decision. The term includes a food, drug, device, or cosmetic that:
  - (A) has lost its label or is otherwise unidentified;
  - (B) has been subjected to prolonged or improper storage;
  - (C) has been subjected for any reason to abnormal

environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, the official National Formulary, or a supplement to any of those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.



(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 5, eff. May 22, 2001.

Sec. 432.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who, in the normal course of business, reconditions the items manufactured, distributed, or processed by or for that person and not purchased by that person solely for the purpose of reconditioning and sale;

(2) a common carrier, or the common carrier's agent, who disposes of or otherwise transfers undamaged or distressed food, drugs, devices, or cosmetics to a person who is exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under Chapter 76, Civil Practice and Remedies Code (Good Faith Donor Act), but that does not recondition the food.

(b) In this chapter, a pharmacist licensed under the law of this state is not considered a manufacturer when the pharmacist fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in the pharmacist's professional capacity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.005. LICENSE REQUIRED. (a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department.

(c) A salvage operator or salvage broker who is engaging only within the scope of the license issued under this chapter is not required to also be licensed under Chapter 431.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 6, eff. May 22, 2001.

Sec. 432.006. LICENSE APPLICATION. An applicant for a salvage broker license or salvage operator license must:

- (1) file a license application on a form prescribed by the department;
- (2) pay a nonrefundable license fee to the department; and
- (3) cooperate with the department in any required prelicensing inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.007. ISSUANCE OF LICENSE. (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by the board.

(b) A license issued under this chapter expires one year after the date of issuance.

(c) A separate license is required for each salvage establishment.

(d) A license may not be transferred from one person to another or from one location to another.

(e) A salvage operator or salvage broker shall display the license in accordance with board rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.008. LICENSE RENEWAL. (a) A license holder under this chapter may renew the license by filing with the department, before the expiration date of the current license, a renewal application on a form prescribed by the department, accompanied by a nonrefundable renewal fee.

(b) After an inspection to determine the license holder's compliance with the rules adopted by the board, the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.009. FEES. (a) The board shall adopt, charge, and collect fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the rules adopted under this chapter. The board may charge the fees annually.

(b) The board by rule shall set the fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

- (1) review and act on licenses;
- (2) amend and renew licenses;
- (3) inspect establishments operated by license holders;

and

(4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

(c) A nonprofit organization is exempt from the payment of a fee imposed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.0095. PROCESSING OF FOOD SALVAGE ESTABLISHMENT LICENSING FEES. (a) The commissioner shall establish a system for processing food salvage establishment licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the

treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the commissioner in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 2, eff. Aug. 30, 1999.

Sec. 432.010. FUND. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the food, drug, device, and cosmetic salvage fund. The fund may be used only to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.011. MINIMUM STANDARDS. (a) The board shall adopt rules prescribing minimum standards or related requirements for:

- (1) the operation of salvage establishments and salvage warehouses; and
- (2) qualifications for licenses issued under this chapter.

(b) The rules shall prescribe standards for food, drugs, devices, and cosmetics in separate subchapters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 7, eff. May 22, 2001.

Sec. 432.012. POWERS OF DEPARTMENT. The department may:

- (1) enter into contracts or agreements necessary to implement this chapter;
- (2) conduct inspections and secure samples;
- (3) establish and maintain educational programs for salvage operators and salvage brokers; and
- (4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department may deny, suspend, or revoke the license of an

applicant or license holder who fails to comply with this chapter or the rules adopted under this chapter.

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the board for the emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code govern a hearing before the department for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 432.014. REINSTATEMENT OF LICENSE. (a) Not later than the 30th day after the date of the denial or emergency suspension, a person whose license application has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating the license.

(b) The department shall perform the reinspection not later than the 10th day after the date of receipt of a written request for reinspection from the applicant or license holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or otherwise traffic in distressed or salvaged merchandise in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.016. MUNICIPAL REGULATION. A municipality by ordinance may regulate salvage operators, salvage brokers, and

salvage establishments. An ordinance may be stricter than the minimum standards established under this chapter or by rules adopted under this chapter, but it may not be less strict.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.017. USE OF SALVAGE WAREHOUSE. A person may not use a salvage warehouse to recondition merchandise or to sell to consumers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.018. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or municipal attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

- (1) an order enjoining the act or an order directing compliance;
- (2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person is engaged in or is about to engage in any of the acts;
- (3) the assessment and recovery of a civil penalty; or
- (4) both the injunctive relief and civil penalty.

(b) The penalty may be in an amount not to exceed \$25,000 for each violation. Each day a violation continues is a separate violation.

(c) In determining the amount of the penalty, the court shall consider:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the demonstrated good faith of the person charged; and
- (5) other matters as justice may require.

(d) Venue for a suit brought under this section is in the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local

government under this chapter shall be paid to the local government.

(f) The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.019. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) operates a salvage establishment or acts as a salvage broker without a license issued under this chapter; or

(2) fails to comply with a rule adopted under Section 432.011.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.020. EMERGENCY ORDER. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory, concerning the sale or distribution of distressed foods, drugs, devices, or cosmetics in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) the sale or distribution of those foods, drugs, devices, or cosmetics creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order without notice and hearing if the commissioner or the commissioner's designee determines it is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the

emergency order is issued, shall determine a time and place for a hearing at which the emergency order will be affirmed, modified, or set aside. The hearing shall be held under departmental formal hearing rules.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.021. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) other matters as justice may require.

(c) The penalty may not exceed \$25,000 for each violation. Each day a violation continues is a separate violation.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.022. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) After making a determination under this section that a penalty is to be assessed, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.



Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the commissioner shall inform the person against whom the order is issued of the amount of the penalty.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:

(A) send the amount of the penalty to the commissioner for placement in an escrow account; or

(B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

(1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general, at the request of the commissioner,

may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.026. DETAINED OR EMBARGOED ARTICLE. In accordance with Subchapter C, Chapter 431, the department may detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under this chapter and that is being held for the purpose of reconditioning in accordance with this chapter if the department makes the finding required by Section 431.048(e).

Added by Acts 2001, 77th Leg., ch. 265, Sec. 8, eff. May 22, 2001.

**CHAPTER 433. TEXAS MEAT AND POULTRY INSPECTION ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 433.001. SHORT TITLE. This chapter may be cited as the Texas Meat and Poultry Inspection Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.002. POLICY. (a) Meat and meat food products are an important source of the nation's total food supply. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products:

- (1) injure the public welfare;
- (2) destroy markets for wholesome, unadulterated, and properly labeled and packaged meat and meat food products;
- (3) cause losses to livestock producers and processors of meat and meat food products;
- (4) cause injury to consumers; and
- (5) can be sold at lower prices and compete unfairly with wholesome, unadulterated, and properly labeled and packaged articles, to the detriment of consumers and the public.

(b) Regulation by the commissioner and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.003. DEFINITIONS. In this chapter:

(1) "Animal food manufacturer" means a person in the business of manufacturing or processing animal food any part of which is derived from a carcass, or a part or product of a carcass, of livestock.

(2) "Capable of use as human food" means:

(A) not naturally inedible by humans; or

(B) not denatured or otherwise identified as required by rule of the commissioner to deter its use as human food.

(3) "Color additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(4) "Commissioner" means the commissioner of health.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, nilga antelope, red sheep, or other cloven-hooved ruminant animal.

(6) "Food additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(7) "Inedible animal product" means a product, other than a meat food product, any part of which is made from a carcass, or a part or product of a carcass, of livestock.

(8) "Interstate commerce" means commerce between this state and:

(A) another state of the United States; or

(B) a foreign country.

(9) "Label" means a display of written, printed, or other graphic matter on the product or the immediate container, other than a package liner, of an article.

(10) "Labeling" means:

(A) a label; or

(B) other written, printed, or graphic material on an article or any container or wrapper of an article, or accompanying an article.

(11) "Livestock" means cattle, bison, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(12) "Meat broker" means a person in the business of buying or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of livestock, or otherwise negotiating purchases or sales of those articles other than for the person's own account or as an employee of another person.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food industry; and

(B) is exempted from the definition of meat food product by the commissioner under conditions that the commissioner prescribes to assure that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by rule of the commissioner for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by the commissioner for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the commissioner at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by rule of the commissioner showing that an article was inspected and passed as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by rule of the commissioner to identify the status of an article or animal under this chapter.

(19) "Pesticide chemical" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(20) "Poultry" means a live or dead domesticated bird.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

(A) contains poultry ingredients only in a relatively small proportion or that historically has not been considered by consumers as a product of the poultry food industry; and

(B) is exempted from the definition of poultry product by the commissioner under conditions that the commissioner prescribes to assure that the poultry ingredients in the product are unadulterated and that the product is not represented as a poultry product.

(22) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or manufactured or processed in any other manner.

(23) "Processing establishment" means a slaughtering, packing, meat-canning, or rendering establishment or a similar establishment.

(24) "Raw agricultural commodity" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(25) "Renderer" means a person in the business of rendering carcasses, or parts or products of carcasses, of livestock, other than rendering conducted under inspection under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 41, Sec. 2, eff. May 15, 2003.

Sec. 433.004. ADULTERATION. A carcass, part of a carcass, meat, or a meat food product is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless:

(A) the substance is not an added substance; and

(B) the quantity of the substance in or on the article does not ordinarily render it injurious to health;

(2) it bears or contains, because of administration of a substance to a live animal or otherwise, an added poisonous or deleterious substance that the commissioner believes makes the article unfit for human food, other than a:

(A) pesticide chemical in or on a raw agricultural commodity;

(B) food additive; or

(C) color additive;

(3) any part of it is a raw agricultural commodity that bears or contains a pesticide chemical that is unsafe under Section 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

(4) it bears or contains a food additive that is unsafe under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348) or a color additive that is unsafe for purposes of Section 706 of that Act (21 U.S.C. Section 376);

(5) it is not adulterated under Subdivision (3) or (4), but use of the pesticide chemical, food additive, or color additive that the article bears or contains is prohibited by rule of the commissioner in establishments at which inspection is maintained under Subchapter B;

(6) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food;

(7) it is prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

(8) any part of it is the product of an animal, including an exotic animal, that has died in a manner other than slaughter;

(9) any part of its container is composed of a poisonous or deleterious substance that may render the contents injurious to health;

(10) it is intentionally subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(11) any part of a valuable constituent is omitted or abstracted from it, or a substance is substituted for all or part of it;

(12) damage or inferiority is concealed;

(13) a substance has been added to or mixed or packed with it in a manner that:

(A) increases its bulk or weight;

(B) reduces its quality or strength; or

(C) makes it appear better or of greater value than it is; or

(14) it is margarine containing animal fat and any part of the raw material used in it consists of a filthy, putrid, or decomposed substance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.005. MISBRANDING. (a) A livestock or poultry product is misbranded if:

- (1) any part of its labeling is false or misleading;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" immediately followed by the name of the food imitated;
- (4) its container is made, formed, or filled so as to be misleading;
- (5) except as provided by Subsection (b), it does not bear a label showing:
  - (A) the manufacturer's, packer's, or distributor's name and place of business; and
  - (B) an accurate statement of the quantity of the product by weight, measure, or numerical count;
- (6) a word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling in sufficient terms and with sufficient conspicuousness, compared with other words, statements, designs, or devices in the label or labeling, to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by rule of the commissioner under Section 433.043 unless:
  - (A) it conforms to the definition and standard; or
  - (B) its label bears:
    - (i) the name of the food specified in the definition and standard; and
    - (ii) to the extent required by rule of the commissioner, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;
- (8) it purports to be or is represented as a food for which a standard of fill of container has been prescribed by rule of the commissioner under Section 433.043 and the food does not meet the standard of fill of container, unless its label bears, in the manner and form prescribed by rule of the commissioner, a statement that it

does not meet the standard;

(9) except as provided by Subsection (c), it does not purport to be or is not represented as a food for which a standard of identity or composition has been prescribed by rule of the commissioner unless its label bears:

(A) any common or usual name of the food; and

(B) if it is fabricated from two or more ingredients, the common or usual name of each ingredient;

(10) it purports to be or is represented for special dietary uses and its label does not bear the information concerning its vitamin, mineral, and other dietary properties that the commissioner, after consultation with the United States Secretary of Agriculture, has determined and prescribed by rule to be necessary to fully inform purchasers of its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or a chemical preservative unless it bears labeling stating that fact, except as otherwise prescribed by rule of the commissioner for situations in which compliance with this subdivision is impracticable; or

(12) it does not bear on itself or its container, as prescribed by rule of the commissioner:

(A) the inspection legend and establishment number of the establishment in which the product was prepared; and

(B) notwithstanding any other provision of this section, other information the commissioner by rule requires to assure that the product will not have false or misleading labeling and that the public will be informed of the manner of handling required to keep the product in wholesome condition.

(b) The commissioner may adopt rules:

(1) exempting from Subsection (a)(5) livestock products not in containers; and

(2) providing reasonable variations from Subsection (a)(5)(B) and exempting from that subsection small packages of livestock products or poultry products.

(c) For products subject to Subsection (a)(9), the commissioner may authorize the designation of spices, flavorings, and colorings without naming them. The commissioner may adopt rules establishing exemptions from Subsection (a)(9)(B) to the extent that compliance with that subsection is impracticable or would result in deception or unfair competition.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.006. PERSONAL USE EXEMPTION. (a) The provisions of this chapter requiring inspection of the slaughter of livestock and the preparation of carcasses, parts of carcasses, meat, and meat food products at establishments conducting those operations do not apply to the slaughtering of livestock or the preparation and transportation in intrastate commerce of those articles if:

(1) the articles are exclusively for personal use by the owner of the livestock, a member of the owner's family, or a nonpaying guest of the owner;

(2) the slaughter or preparation is conducted at the owner's premises or at a processing establishment; and

(3) the transportation is limited to moving the carcasses, parts of carcasses, meat, and meat food products to and from the owner's premises and a processing establishment.

(b) The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to articles prepared by a processing establishment under Subsection (a).

(c) This section does not grant a personal use exemption to an owner who intends to give carcasses, parts of carcasses, meat, or meat food products to any person other than a person listed in Subsection (a)(1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 1, eff. Sept. 1, 1997.

Sec. 433.007. CONSTRUCTION WITH OTHER LAW. (a) This chapter prevails over any other law, including Chapter 431 (Texas Food, Drug, and Cosmetic Act), to the extent of any conflict.

(b) This chapter applies to a person, establishment, animal, or article regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 2, eff. Sept. 1, 1997.

Sec. 433.008. RULES. (a) The commissioner shall adopt rules necessary for the efficient execution of this chapter.

(b) The commissioner shall adopt and use federal rules, regulations, and procedures for meat and poultry inspection, as applicable.

(c) The department may adopt rules requiring a processing establishment that processes livestock under Section 433.006(a)(2) to obtain a grant of custom exemption for that activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 3, eff. Sept. 1, 1997.

Sec. 433.009. FEES. The Texas Department of Health may collect fees for overtime and special services rendered to establishments, and may collect a fee for services required to be performed under this chapter relating to the inspection of animals, birds, or products that are not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). The Texas Board of Health by rule shall set the inspection fee in an amount sufficient to recover the department's costs of providing those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. INSPECTION AND OTHER REGULATION**

Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the commissioner, through livestock inspectors, shall examine and inspect each livestock animal before it is allowed to enter a processing establishment in this state in which slaughtering and preparation of meat and meat food products of livestock are conducted solely for intrastate commerce.

(b) Any livestock animal found on inspection to show symptoms of disease shall be set apart and slaughtered separately from other livestock. The carcass of the animal shall be carefully examined and inspected as provided by rule of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.022. INSPECTION OF CARCASSES. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the commissioner, through livestock inspectors, shall inspect each livestock carcass or part of a carcass capable of use as human food that is to be prepared at a processing establishment in this state in which those articles are prepared solely for intrastate commerce. If a carcass or part of a carcass is brought into the processing establishment, the inspection shall be made before a carcass or part of a carcass is allowed to enter a department in which it is to be treated and prepared for meat food products. The commissioner shall also inspect products that have left a processing establishment and are returned to a processing establishment in which inspection is maintained.

(b) The inspector shall mark, stamp, tag, or label a carcass or part of a carcass found on inspection to be unadulterated as "inspected and passed," and one found adulterated as "inspected and condemned."

(c) If an inspector considers a subsequent inspection necessary, the inspector may reinspect any carcass or part of a carcass and condemn it if it has become adulterated.

(d) The processing establishment, in the presence of an inspector, shall destroy for food purposes each condemned carcass or part of a carcass. If the establishment fails to destroy a condemned carcass or part of a carcass, the commissioner may remove the inspectors from the establishment.

(e) The commissioner may limit the entry of carcasses, parts of carcasses, meat, or meat food products into an establishment in which inspection under this chapter is maintained, under conditions the commissioner prescribes to assure that entry of the article into the establishment is consistent with the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.023. INVESTIGATION OF DISEASE FINDINGS; QUARANTINE.

(a) The commissioner may investigate a disease finding by a livestock inspector if the commissioner determines that the investigation is in the best interest of public health.

(b) If a disease adverse to the public health is found under this chapter, the commissioner may quarantine the premises where an

animal is located that is afflicted with any stage of a disease that may be transmitted to man or other animals. A quarantined animal may be removed from a quarantined area only on permission from and under supervision by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING ESTABLISHMENTS. (a) The commissioner, through sanitation experts and other competent inspectors, shall inspect each processing establishment in which livestock is slaughtered and meat and meat food products of the livestock are prepared solely for intrastate commerce as necessary to obtain information about the establishment's sanitary conditions.

(b) The commissioner, through sanitation experts and other competent inspectors, shall inspect each slaughtering establishment whose primary business is the selling of livestock to be slaughtered by the purchaser on premises owned or operated by the seller. This subsection does not nullify the provisions in Section 433.006 of the Health and Safety Code relating to personal use exemption.

(c) The commissioner shall adopt rules governing sanitation maintenance in processing and slaughtering establishments as defined by this section.

(d) If sanitary conditions of a processing establishment render meat or meat food products adulterated, the commissioner shall prohibit the meat or meat food products from being labeled, marked, stamped, or tagged as "Texas inspected and passed."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 308, Sec. 2, eff. Sept. 1, 1993.

Sec. 433.0245. REQUIREMENTS FOR CERTAIN LOW-VOLUME LIVESTOCK PROCESSING ESTABLISHMENTS. (a) Except as provided by this section, the inspection and regulatory provisions of this chapter do not apply to a low-volume livestock processing establishment that is exempt from federal inspection.

(b) A low-volume livestock processing establishment that is exempt from federal inspection shall register with the Texas Department of Health in accordance with rules adopted by the

commissioner for registration.

(c) A low-volume livestock processing establishment that is exempt from federal inspection shall develop a sanitary operation procedures plan.

(d) If contaminated livestock can be reasonably traced to a low-volume livestock processing establishment that is exempt from federal inspection, the commissioner may request the attorney general or the district or county attorney in the jurisdiction where the facility is located to institute a civil suit to enjoin the operation of the establishment until the commissioner determines that the establishment has been sanitized and is operating safely.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 2, eff. Sept. 1, 2001.

Sec. 433.025. INSPECTION OF MEAT FOOD PRODUCTS. (a) To prevent the use in intrastate commerce of adulterated meat food products, the commissioner, through inspectors, shall examine and inspect all meat food products prepared in a processing establishment solely for intrastate commerce. To make the examination and inspection, an inspector shall be given access at all times to each part of the establishment, regardless of whether the establishment is being operated.

(b) The inspector shall mark, stamp, tag, or label products found unadulterated as "Texas inspected and passed" and those found adulterated as "Texas inspected and condemned."

(c) The establishment shall, in the manner provided for condemned livestock or carcasses, destroy for food purposes each condemned meat food product. If the establishment does not destroy a condemned meat food product, the commissioner may remove inspectors from the establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a) The commissioner shall provide for inspection at night of livestock slaughtered at night and food products prepared at night for the purposes of intrastate commerce.

(b) If the commissioner determines that a person's operating hours are capricious or unnecessarily difficult, the commissioner may

set the person's time and duration of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.027. INSPECTORS. (a) The commissioner shall appoint the inspectors of livestock that is subject to inspection under this chapter, and of carcasses, parts of carcasses, meat, meat food products, and sanitary conditions of establishments in which meat and meat food products are prepared. An inspector is an employee of the Texas Department of Health and is under supervision of the chief officer in charge of inspection.

(b) The commissioner shall designate at least one state inspector for each state representative district.

(c) The chief officer in charge of inspection is a person designated by the commissioner as responsible for animal health as it relates to public health. The chief officer in charge of inspection must be licensed to practice veterinary medicine in this state or must be eligible for such a license when employed and must obtain the license not later than two years after the date of employment. The chief officer in charge of inspection is directly responsible to the commissioner.

(d) An inspector shall perform the duties provided by this chapter and rules of the commissioner. An inspection or examination must be performed as provided by rules of the commissioner.

(e) An inspector may not stamp, mark, tag, or label a carcass, part of a carcass, or a meat food product unless it has been inspected and found unadulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.028. REFUSAL TO INSPECT. (a) The commissioner may withdraw or refuse to provide inspection service under this subchapter from an establishment for the period the commissioner determines necessary to carry out the purposes of this chapter if the commissioner determines after opportunity for hearing that the applicant for or recipient of the service is unfit to engage in a business requiring inspection under this subchapter because the applicant or recipient, or a person responsibly connected with the applicant or recipient, has been convicted in a federal or state

court of a felony or more than one violation of another law based on:

(1) acquiring, handling, or distributing unwholesome, mislabeled, or deceptively packaged food; or

(2) fraud in connection with a transaction in food.

(b) The commissioner's determination and order under this section is final unless, not later than the 30th day after the effective date of the order, the affected applicant or recipient files an application for judicial review in the appropriate court as provided by Section 433.082. Judicial review of the order is on the record from which the determination and order was made.

(c) This section does not affect the provisions of this subchapter relating to withdrawal of inspection services from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts of carcasses, meat, or meat food products.

(d) For the purposes of this section, a person is responsibly connected with the business if the person is a partner, officer, director, holder or owner of 10 percent or more of the business's voting stock, or managerial or executive employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION. (a) Under this subchapter, the commissioner may not inspect an establishment for the slaughter of livestock or the preparation of carcasses, parts of carcasses, or products of livestock if the articles are not intended for use as human food. Before offered for sale or transportation in intrastate commerce, those articles, unless naturally inedible by humans, shall be denatured or identified as provided by rule of the commissioner to deter their use for human food.

(b) A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce a carcass, part of a carcass, meat, or a meat food product that is not intended for use as human food unless the article is naturally inedible by humans, denatured, or identified as required by rule of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.030. DETENTION. (a) A representative of the commissioner may detain a carcass, part of a carcass, meat, a meat food product of livestock, a product exempted from the definition of meat food product, or a dead, dying, disabled, or diseased livestock animal if the representative finds the article on premises where it is held for purposes of intrastate commerce, or during or after distribution in intrastate commerce, and there is reason to believe that the article:

(1) is adulterated or misbranded and is capable of use as human food; or

(2) has not been inspected as required by, or has been or is intended to be distributed in violation of:

(A) this subchapter;

(B) the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.);

(C) the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.); or

(D) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) An article may be detained for not more than 20 days and only pending action under Section 433.031 or notification of a federal authority having jurisdiction over the article.

(c) A person may not move a detained article from the place where it is detained until the article is released by the commissioner's representative.

(d) The commissioner's representative may require that each official mark be removed from the article before it is released, unless the commissioner determines that the article is eligible to bear the official mark.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.031. SEIZURE. (a) A carcass, part of a carcass, meat, or a meat food product of livestock, or a dead, dying, disabled, or diseased livestock animal, that is being transported in intrastate commerce or held for sale after transportation in intrastate commerce may be proceeded against, seized, and condemned if the article:

(1) is or has been prepared, sold, transported, or



otherwise distributed or offered or received for distribution in violation of this chapter;

(2) is capable of use as human food and is adulterated or misbranded; or

(3) is otherwise in violation of this chapter.

(b) An action against an article under this section must be on a complaint in the proper court in the county in which the article is found. To the extent possible, the law governing admiralty cases applies to a case under this section, except that:

(1) either party may demand trial by jury of an issue of fact in the case; and

(2) the proceedings must be brought by and in the name of this state.

(c) After entry of the decree, a condemned article shall be destroyed or sold as the court directs. If the article is sold, the proceeds, minus court costs, court fees, and storage and other proper expenses, shall be deposited in the state treasury. An article may not be sold in violation of this chapter, the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). On execution and delivery of a good and sufficient bond conditioned that the article will not be disposed of in violation of this chapter or federal law, the court may direct the article to be delivered to its owner by the commissioner's representative subject to supervision as necessary to ensure compliance with applicable laws.

(d) If a decree of condemnation is entered against the article and it is released under bond or destroyed, the court shall award court costs, court fees, and storage and other proper expenses against any person intervening as claimant of the article.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.032. STORAGE AND HANDLING. (a) The commissioner may adopt rules prescribing conditions under which carcasses, parts of carcasses, meat, and meat food products of livestock must be stored and handled by a person in the business of buying, selling, freezing, storing, or transporting those articles in or for intrastate commerce if the commissioner considers the rules necessary to prevent

adulterated or misbranded articles from being delivered to a consumer.

(b) A person may not violate a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.033. EQUINE PRODUCTS. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by rule of the commissioner, to show the kind of animal from which the article was derived. The commissioner may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.034. RECORDS. (a) A person engaged for intrastate commerce in any of the following business activities shall keep records of each of the person's business transactions:

- (1) slaughtering livestock;
- (2) preparing, freezing, packaging, or labeling a livestock carcass or a part or product of a livestock carcass for use as human food or animal food;
- (3) transporting, storing, buying, or selling, as a meat broker, wholesaler, or otherwise, a livestock carcass or a part or product of a livestock carcass;
- (4) rendering; or
- (5) buying, selling, or transporting dead, dying, disabled, or diseased livestock, or a part of a carcass of a livestock animal that died in a manner other than slaughter.

(b) On notice by the commissioner's representative, a person required to keep records shall at all reasonable times give the commissioner's representative and any representative of the United States Secretary of Agriculture accompanying the commissioner's

representative:

- (1) access to the person's place of business; and
- (2) an opportunity to:
  - (A) examine the facilities, inventory, and records;
  - (B) copy the records required by this section; and
  - (C) take a reasonable sample of the inventory, on payment of the fair market value of the sample.
- (c) The person shall maintain a record required by this section for the period the commissioner by rule prescribes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.035. INSPECTION AND OTHER REGULATION OF EXOTIC ANIMALS IN INTERSTATE COMMERCE. (a) The commissioner has the same rights of examination, inspection, condemnation, and detention of live exotic animals and carcasses, parts of carcasses, meat, and meat food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(b) The commissioner has the same rights of inspection of establishments handling exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(c) The record-keeping requirements of Section 433.034 that apply to persons slaughtering, preparing, buying, selling, transporting, storing, or rendering in intrastate commerce apply to persons performing similar functions with exotic animals in interstate commerce.

(d) A rulemaking power of the commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. LABELING AND OTHER STANDARDS**

Sec. 433.041. LABELING PASSED PRODUCTS. (a) When meat or a meat food product prepared for intrastate commerce that has been inspected as provided by this chapter and marked "Texas inspected and

passed" is placed or packed in a container or covering in an establishment in which inspection is performed under this chapter, the person preparing the product shall attach a label to the container or covering stating that the contents have been "Texas inspected and passed" under this chapter. The inspector shall supervise the attachment of the label and the sealing or enclosing of the meat or meat food product in the container or covering.

(b) When an inspected carcass, part of a carcass, meat, or a meat food product is found to be unadulterated and leaves the establishment, it must bear legible information on itself or its container, as the commissioner requires, that is necessary to prevent it from being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.042. SALE OF MISLABELED ARTICLES PROHIBITED. A person may not sell an article subject to this chapter or offer the article for sale, in intrastate commerce, under a false or misleading name or other marking or in a container of a misleading form or size. An established trade name, other marking and labeling, or a container that is not false or misleading and that is approved by the commissioner is permitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL.

(a) If the commissioner determines that standards are necessary to protect the public, the commissioner may prescribe:

(1) the style and type size that must be used for material required to be incorporated in labeling to avoid false or misleading labeling of an article subject to this subchapter or Subchapter B; and

(2) subject to Subsection (b), a definition or standard of identity or composition or a standard of fill of container for an article subject to this subchapter.

(b) A standard prescribed under Subsection (a)(2) must be consistent with standards established under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), and the

Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). To avoid inconsistency, the commissioner shall consult with the United States Secretary of Agriculture before prescribing the standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE. (a) If the commissioner has reason to believe that a marking or labeling or the size or form of a container in use or proposed for use in relation to an article subject to this subchapter is false or misleading, the commissioner may prohibit the use until the marking, labeling, or container is modified in the manner the commissioner prescribes to prevent it from being false or misleading.

(b) The person using or proposing to use the marking, labeling, or container may request a hearing by the commissioner. The commissioner may prohibit the use pending a final determination by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND CERTIFICATE. A person may not:

(1) cast, print, lithograph, or make in any other manner, except as authorized by the commissioner:

(A) a device containing or label bearing an official mark or a simulation of an official mark; or

(B) a form of official certificate or simulation of an official certificate;

(2) forge an official device, mark, or certificate;

(3) without the commissioner's authorization, use, alter, detach, deface, or destroy an official device, mark, or certificate or use a simulation of an official device, mark, or certificate;

(4) detach, deface, destroy, or fail to use an official device, mark, or certificate, in violation of a rule of the commissioner;

(5) knowingly possess, without promptly notifying the commissioner or the commissioner's representative:

(A) an official device;

(B) a counterfeit, simulated, forged, or improperly altered official certificate; or

(C) a device, label, animal carcass, or part or product of an animal carcass, bearing a counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make a false statement in a shipper's certificate or other certificate provided for by rule of the commissioner; or

(7) knowingly represent that an article has been inspected and passed, when it has not, or is exempted, when it is not.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. MISCELLANEOUS PROHIBITIONS**

Sec. 433.051. SLAUGHTER OR PREPARATION NOT IN COMPLIANCE WITH CHAPTER. A person, at an establishment preparing articles only for intrastate commerce, may not slaughter a livestock animal or prepare a carcass, part of a carcass, meat, or a meat food product of a livestock animal, capable of use as human food, except in compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.052. SALE, RECEIPT, OR TRANSPORTATION OF ARTICLES NOT IN COMPLIANCE WITH CHAPTER. A person may not:

(1) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, livestock or a carcass, part of a carcass, meat, or a meat food product of livestock that is:

(A) capable of use as human food and is adulterated or misbranded when sold, offered, transported, or received for transportation; or

(B) required to be inspected by this chapter but has not been inspected and passed; or

(2) perform an act with respect to livestock or a carcass, part of a carcass, meat, or a meat food product of livestock, while the article is being transported in intrastate commerce or held for sale after transportation in intrastate commerce, that causes or is intended to cause the article to be adulterated or misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, slaughtered poultry from which blood, feathers, feet, head, or viscera have not been removed as provided by rule of the commissioner, except as authorized by rule of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.054. DEAD, DYING, DISABLED, AND DISEASED ANIMALS; ANIMALS DYING IN MANNER OTHER THAN SLAUGHTER. (a) If registration is required by rule of the commissioner, a person may not engage in any of the following businesses, in or for intrastate commerce, unless the person has registered with the commissioner:

- (1) meat brokering or rendering;
- (2) manufacturing animal food;
- (3) wholesaling or warehousing for the public livestock or any part of a carcass of livestock, regardless of whether it is intended for human food; or
- (4) buying, selling, or transporting dead, dying, disabled, or diseased livestock or part of a carcass of livestock.

(b) A registration must include the person's name, each of the person's places of business, and each trade name under which the person does business.

(c) A person may not engage in the business of selling, buying, or transporting in intrastate commerce dead, dying, disabled, or diseased livestock or part of the carcass of livestock that died otherwise than by slaughter unless the transaction or transportation complies with rules adopted by the commissioner to assure that the animals or unwholesome parts or products of the animals are not used for human food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.055. MISCELLANEOUS PROHIBITIONS APPLICABLE TO EXOTIC

ANIMALS IN INTERSTATE COMMERCE. The prohibitions of Sections 433.051-433.054 that apply to intrastate commerce also apply to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.056. INEDIBLE ANIMAL PRODUCTS. A person in the business of buying, selling, or transporting, in intrastate commerce, may not offer an inedible animal product for sale unless:

- (1) the sale is for further sterilization processing; or
- (2) the product has been processed in a manner that prevents the survival of disease-producing organisms or deleterious substances in the processed material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. COOPERATION WITH FEDERAL GOVERNMENT**

Sec. 433.071. RESPONSIBLE AGENCY. (a) The Texas Department of Health is the state agency responsible for cooperating with the United States Secretary of Agriculture under Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454).

(b) The department shall cooperate with the secretary of agriculture in developing and administering the meat and poultry inspection program of this state under this chapter in a manner that will achieve the purposes of this chapter and federal law and that will ensure that the requirements will be at least equal to those imposed under Titles I and IV, Federal Meat Inspection Act (21 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4, 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C. Sections 451-453, 455-459, and 461-467b), not later than the dates prescribed by federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.072. ADVISORY COMMITTEES. The commissioner may recommend to the United States Secretary of Agriculture state officials or employees for appointment to advisory committees



provided for by Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454). The commissioner shall serve as the representative of the governor for consultation with the secretary of agriculture under those Acts unless the governor selects another representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND TRAINING PROGRAM. The commissioner may accept from the United States Secretary of Agriculture:

- (1) advisory assistance in planning and otherwise developing the state program;
- (2) technical and laboratory assistance;
- (3) training, including necessary curricular and instructional materials and equipment; and
- (4) financial and other aid for administration of the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.074. FINANCING. The commissioner may spend state funds appropriated for administration of this chapter to pay 50 percent of the estimated total cost of cooperation with the federal government under this subchapter, and all of the costs of performing services in relation to the inspection of animals or products not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. ENFORCEMENT**

Sec. 433.081. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which this chapter does not provide another criminal penalty.

(b) Except as provided by Subsection (c), an offense under this

section is punishable by a fine of not more than \$1,000, imprisonment for not more than one year, or both.

(c) If an offense under this section involves intent to defraud or a distribution or attempted distribution of an adulterated article, except adulteration described by Section 433.004(11), (12), or (13), the offense is punishable by a fine of not more than \$10,000, imprisonment for not more than three years, or both.

(d) A person does not commit an offense under this section by receiving for transportation an article in violation of this chapter if the receipt is in good faith and if the person furnishes, on request of a representative of the commission:

- (1) the name and address of the person from whom the article is received; and
- (2) any document pertaining to the delivery of the article.

(e) This chapter does not require the commissioner to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the commissioner believes that the public interest will be adequately served by a suitable written warning notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.0815. INTERFERENCE WITH INSPECTION; CRIMINAL PENALTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a livestock inspector while the inspector is performing a duty under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.

Sec. 433.082. JURISDICTION FOR VIOLATION. The district court has jurisdiction of:

- (1) an action to enforce and to prevent and restrain a violation of this chapter; and
- (2) any other case arising under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.083. INVESTIGATION BY COMMISSIONER. The commissioner may investigate and gather and compile information concerning the organization, business, conduct, practices, and management of a person engaged in intrastate commerce and the person's relation to other persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes of this chapter, the commissioner at all reasonable times shall be given access to documentary evidence of a person being investigated or proceeded against to examine or copy the evidence. The commissioner by subpoena may require the attendance and testimony of a witness and the production of documentary evidence relating to a matter under investigation, at a designated place of hearing in a county in which the witness resides, is employed, or has a place of business.

(b) The commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. On disobedience of a subpoena, the commissioner may request the district court to require attendance and testimony of a witness and the production of documentary evidence, and the district court having jurisdiction over the inquiry may order the compliance. Failure to obey the court's order is punishable as contempt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.085. REPORT TO COMMISSIONER. The commissioner, by general or special order, may require a person engaged in intrastate commerce to file with the commissioner an annual report, special report, or both, or answers in writing to specific questions furnishing the commissioner information that the commissioner requires concerning the person's organization, business, conduct, practices, management, and relation to other persons filing written answers and reports. The commissioner may prescribe the form of the report or answers, require the report or answers to be given under oath, and prescribe a reasonable deadline for filing the report or

answers, subject to the granting of additional time by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On application of the attorney general at the request of the commissioner, the district court may issue a writ of mandamus ordering a person to comply with this chapter or an order of the commissioner under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.087. DEPOSITIONS. (a) The commissioner may order testimony to be taken before a person designated by the commissioner and having power to administer oaths at any stage of a proceeding or investigation under this chapter. A person may be compelled to appear and depose or produce documentary evidence at a deposition in the same manner as a witness may be compelled to appear and testify and produce documentary evidence before the commissioner under this chapter.

(b) The person taking the deposition shall transcribe or supervise the transcription of the testimony. The transcript must be signed by the person deposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A witness summoned before the commissioner is entitled to the same fees and mileage paid a witness in a state court. A witness whose deposition is taken and the person taking the deposition are each entitled to the same fees paid for similar services in a state court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.089. IMMUNITY. (a) A person is not excused from attending and testifying or producing documentary evidence before the commissioner or in obedience to the commissioner's subpoena, whether

signed by the commissioner or the commissioner's delegate, or in a cause or proceeding based on or growing out of an alleged violation of this chapter, on the ground that the required testimony or evidence may tend to incriminate the person or subject the person to penalty or forfeiture.

(b) A person may not be prosecuted or subjected to a penalty or forfeiture for or because of a transaction or matter concerning which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination.

(c) The person testifying under this section is not exempt from prosecution and punishment for perjury committed in that testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.090. CONTEMPT. (a) A person commits an offense if the person neglects or refuses to attend and testify or answer a lawful inquiry or to produce documentary evidence, if the person has the power to do so, in obedience to a subpoena or lawful requirement of the commissioner.

(b) An offense under this section is punishable by a fine of not less than \$1,000 or more than \$5,000, imprisonment for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.091. FALSE REPORT; FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) makes or causes to be made a false entry in an account, record, or memorandum kept by a person subject to this chapter;

(2) neglects or fails to make or cause to be made full entries in an account, record, or memorandum kept by a person subject to this chapter of all facts and transactions pertaining to the person's business;

(3) removes from the jurisdiction of this state or mutilates, alters, or otherwise falsifies documentary evidence of a person subject to this chapter; or

(4) refuses to submit to the commissioner or to the commissioner's authorized agent, for inspection and copying,

documentary evidence in the person's possession or control of a person subject to this chapter.

(b) An offense under this section is punishable by a fine of not less than \$1,000 or more than \$5,000, imprisonment for not more than three years, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.092. FAILURE TO REPORT; CIVIL PENALTY. (a) If a person required by this chapter to file an annual or special report does not file the report before the deadline for filing set by the commissioner and the failure continues for 30 days after notice of the default, the person forfeits to the state \$100 for each day the failure continues.

(b) An amount due under this section is payable to the state treasury and is recoverable in a civil suit in the name of the state brought in the district court of the county in which the person's principal office is located or in which the person does business.

(c) Each district attorney, under the direction of the attorney general, shall prosecute for the recovery of an amount due under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.093. UNLAWFUL DISCLOSURE; CRIMINAL PENALTY. (a) A state officer or employee commits an offense if the officer or employee makes public information obtained by the commissioner without the approval of the commissioner.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.094. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates this chapter, a rule adopted by the board under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) such other matters as justice may require.

(c) The penalty may not exceed \$25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.

Sec. 433.095. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.

Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the commissioner shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the

person shall:

- (1) pay the penalty in full; or
- (2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:
  - (A) send the amount of the penalty to the commissioner for placement in an escrow account; or
  - (B) post with the commissioner a bond for the amount of the penalty.
- (c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.
- (d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.

Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

- (1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the bond if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.

Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.

Sec. 433.099. INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or a rule adopted under this chapter, the commissioner may request the attorney general or the



district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation; or  
 (2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the commissioner shows that the person has engaged in or is engaging in a violation.

(b) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(c) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.

Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF INSPECTION SERVICES. (a) The commissioner or the commissioner's designee may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(1) the commissioner or the commissioner's designee determines that a violation of this chapter presents an imminent threat to public health and safety; or

(2) a person affiliated with the processing establishment impedes an inspection under this chapter.

(b) An affected person is entitled to a review of an action of the commissioner or the commissioner's designee under Subsection (a) in the same manner that a refusal or withdrawal of inspection services may be reviewed under Section 433.028.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.

**CHAPTER 434. PUBLIC HEALTH PROVISIONS RELATING TO PRODUCTION OF BAKED  
 GOODS  
 SUBCHAPTER A. BAKERIES**

Sec. 434.001. DEFINITION. In this subchapter "bakery" means a business producing, preparing, storing, or displaying bakery products intended for sale for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.002. BAKERY REQUIREMENTS. (a) A building used or occupied as a bakery shall be clean and properly lighted, drained, and ventilated.

(b) A bakery shall have adequate plumbing and drainage facilities, including suitable wash sinks and restroom facilities. Restroom facilities shall be separate from the rooms in which the bakery products are produced or handled. Each wash sink area and restroom facility shall be clean, sanitary, well lit, and ventilated.

(c) The floors, walls, and ceilings of a room in which dough is mixed or handled, pastry is prepared for baking, or bakery products or the ingredients of those products are otherwise handled or stored shall be clean, wholesome, and sanitary. Each opening into the room, including a window or door, shall be properly screened or otherwise protected to exclude flies.

(d) A showcase, shelf, or other place from which bakery products are sold shall at all times be clean, wholesome, covered, properly ventilated, and protected from dust and flies.

(e) A workroom may not be used for purposes other than those directly connected with the preparation, baking, storage, or handling of food. A workroom may not be used as a washing, sleeping, or living room and shall at all times be kept separate and closed from living and sleeping rooms.

(f) Each bakery shall provide, separate from the workrooms, a dressing room for the changing and hanging of wearing apparel. Each dressing room shall be kept clean at all times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.003. SANITARY REQUIREMENTS. (a) A person may not sit or lie on any table, bench, trough, or shelf intended for dough or bakery products.

(b) Animals or fowl may not be kept or allowed in any bakery or other place where bakery products are produced or stored.

(c) A person engaged in the preparation or handling of bakery products shall wash the person's arms and hands thoroughly before beginning the preparation, mixing, or handling of ingredients used in baking. A bakery shall provide sufficient soap, washbasins, and clean towels for that purpose.

(d) A person may not use tobacco in any form in any room in which a bakery product is manufactured, wrapped, or prepared for sale.

(e) A person with a communicable disease may not work in a bakery, handle any product in the bakery, or deliver a product from the bakery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.004. WHOLESOME INGREDIENTS REQUIRED. (a) Materials used in the production or preparation of bakery products shall be stored, handled, and maintained in a manner that protects the materials from spoiling and contamination. Materials may not be used if spoiled, contaminated, or otherwise likely to make the bakery product unwholesome or unfit as food.

(b) The ingredients used in the production of bakery products and the sale or offering for sale of those products shall comply with the laws relating to the adulteration and misbranding of food. Ingredients may not be used that may make the bakery product injurious to health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.005. REQUIREMENTS FOR TRANSPORTATION OF BAKERY PRODUCTS. A vehicle, box, basket, or other receptacle in which bakery products are transported shall at all times be kept clean and free from dust, flies, or other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.006. STORAGE RECEPTACLE REQUIREMENTS. (a) A box or other receptacle for the storage or receipt of bakery products shall be:

- (1) constructed and placed to be free from contamination from streets, alleys, and sidewalks;
  - (2) raised at least 10 inches above the level of the street or sidewalk; and
  - (3) clean and sanitary.
- (b) Bread may not be placed in a storage box with other food except other bakery products.
- (c) A storage box shall be equipped with a private lock and shall be kept locked except when opened to receive or remove bakery products or when being cleaned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.007. WEIGHT STANDARDS FOR BREAD LOAVES. (a) Loaves of bread made by persons in the business of wholesaling and retailing bread must comply with the weight standards in this section.

- (b) The standard weights for a loaf of bread are:
- (1) one pound;
  - (2) 1-1/2 pounds; or
  - (3) any other multiple of one pound.
- (c) This section does not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less.
- (d) Variations in the weight standard may not exceed one ounce a pound within 24 hours after baking.
- (e) This section does not affect the authority of the Department of Agriculture under Subchapter B, Chapter 13, Agriculture Code.
- (f) This section does not apply to a food service establishment as defined under Chapter 437 or a food establishment licensed under Chapter 431 as a food manufacturer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1534, Sec. 1, eff. Sept. 1, 1999.

Sec. 434.008. CRIMINAL PENALTY. (a) A person who violates this subchapter commits an offense.

- (b) An offense under this section is punishable by a fine of not less than \$25 or more than \$200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. ADULTERATED INGREDIENTS**

Sec. 434.021. BAKING POWDER. Baking powder that contains less than 10 percent of available carbon dioxide is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.022. SELF-RISING FLOUR. (a) In this section, "self-rising flour" means a combination of flour, salt, and chemical leavening ingredients. The flour must be at least of the "straight" grade, and the chemical leavening ingredients must be bicarbonate of soda and:

- (1) calcium acid phosphate;
- (2) sodium aluminum sulphate;
- (3) cream of tartar;
- (4) tartaric acid; or
- (5) a combination of those ingredients.

(b) A self-rising flour or other compound by that name must produce when sold not less than one-half percent by weight of available carbon dioxide gas and may not contain more than 3-1/2 percent chemical leavening ingredients.

(c) A self-rising flour or other compound by that name that does not meet the requirements of Subsection (b) is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **CHAPTER 435. DAIRY PRODUCTS**

#### **SUBCHAPTER A. MILK OFFERED FOR SALE AND MILK GRADING**

Sec. 435.001. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Person" means an individual, plant operator, partnership, corporation, company, firm, trustee, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.0015. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.010(c), Chapter 431 applies to a person and milk or a milk product regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 3, eff. Sept. 1, 2003.

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. (a) The board may supervise and regulate the grading and labeling of milk and milk products according to the standards, specifications, and requirements it adopts for each grade and in conformity with this subchapter.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1387, Sec. 5, eff. September 1, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 5, eff. September 1, 2007.

Sec. 435.003. MILK SPECIFICATIONS. (a) The board by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing purposes, and dairy products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

(b) The rules must be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 2, eff. September 1, 2007.

## Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY BOARD.

(a) The board or its representative shall sample, test, or inspect Grade "A" pasteurized milk and milk products, Grade "A" raw milk and milk products for pasteurization, milk for manufacturing purposes, and dairy products that are offered for sale.

(b) Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization that come from beyond the limits of state inspection shall be sampled, tested, or inspected to determine if department standards and requirements for milk and milk products are met.

(c) Sampling, testing, and inspection of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk for pasteurization shall include, in addition to any other tests that may be required, tests for:

- (1) plate count or direct microscopic count;
- (2) antibiotics;
- (3) sediments;
- (4) phosphatase; and
- (5) water and any elements foreign to the natural contents of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1387, Sec. 5, eff. September 1, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 5, eff. September 1, 2007.

Sec. 435.005. INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES. (a) The board may contract with a county or municipality to act as the agent of the board to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

(b) A municipality, county, or other political subdivision may test and inspect milk or milk products. In the absence of a contract under Subsection (a), the municipality, county, or other political

subdivision must pay the cost of the test or inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers milk or milk products for sale or to be sold in this state must hold a permit issued by the board. The person must apply to the board or the board's representative for a permit.

(b) After receiving the application, the board or the board's representative may determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The board shall maintain a list of the names of all applicants to whom the board has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked.

(d) The board may not issue a permit to a person for a producer dairy located in an area infected with or at a high risk for bovine tuberculosis, as determined epidemiologically and defined by rule of the Texas Animal Health Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 445, Sec. 2, eff. June 4, 2001.

Sec. 435.007. USE OF MISLEADING LABEL. (a) A person may not use a label, device, or design marked Grade "A," or any other grade, statement, device, or design related to the safety, sanitary quality, or food value, on milk or milk products produced, offered for sale, or sold in this state that is misleading or does not conform to the requirements of this subchapter.

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the board for Grade "A" milk and milk products.

(c) A person may not sell to a consumer milk or a milk product



labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.008. MILK FOR RESALE. A person is not required to hold a permit to resell or offer for resale in the same container any milk or milk products that are represented or advertised as a grade of milk or milk products and that are purchased from a person holding a permit authorizing that representation or advertisement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.009. FEES. (a) A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) The department shall impose the following fees only:

(1) a permit fee of \$200 every two years for a producer dairy farm;

(2) a permit fee of \$800 every two years for a processing or bottling plant;

(3) a permit fee of \$800 every two years for a receiving and transfer station;

(4) a permit fee of \$200 every two years for a milk transport tanker;

(5) a fee of 4-1/2 cents for each 100 pounds of milk or milk products processed and distributed in this state by a processing or bottling plant in this state, or processed by an out-of-state processing or bottling plant and sold in this state; and

(6) a fee of 1-1/2 cents for each 100 pounds of dairy products processed by a processing or bottling plant in this state.

(c) The board shall adopt rules to assess and collect the fees imposed by Subsections (b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with board rules.

(d) A permit issued under this chapter is valid for two years and must be renewed not later than September 1 of the year in which

the permit expires.

(e) The department shall prorate fees paid for permits issued under this chapter after the beginning of a permit year.

(f) In this section:

(1) "Dairy farm" means a place where one or more cows or goats are kept and from which milk or milk products are provided, sold, or offered for sale to a milk plant or transfer station.

(2) "Transfer station" means a place where milk or milk products are transferred directly from one transport tank to another.

(g) Subject to legislative appropriation, the department may use money collected under Subsection (b)(5) only for milk inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 411, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 4, eff. September 1, 2007.

Sec. 435.010. RECORDS. The board by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.011. HEARING. (a) The board shall establish a procedure by which a person aggrieved by the application of a board rule may receive a hearing under Chapter 2001, Government Code.

(b) The refusal or the suspension or revocation of a permit by the department and the appeal of that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 757, Sec. 4, eff. Sept. 1, 2003.

Sec. 435.012. REFUSAL TO GRANT PERMIT; SUSPENSION OR

REVOCATION OF PERMIT. (a) The department may refuse an application for a permit under this chapter or may suspend or revoke a permit issued under this chapter.

(b) The board and its representative may revoke and regrade permits if on inspection the board or its representative finds that the use of the grade label does not conform to the specifications or requirements adopted by the board under this chapter.

(c) The board by rule shall:

(1) provide for the denial, suspension, or revocation of a permit; and

(2) establish reasonable minimum standards for granting and maintaining a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 5, eff. Sept. 1, 2003.

Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED. A municipality by ordinance may allow only pasteurized milk and pasteurized milk products to be sold at retail in that municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$25 or more than \$200.

(c) Each violation constitutes a separate offense.

(d) The penalty prescribed by this section is subject to either the sanctions prescribed in the Grade A Pasteurized Milk Ordinance for products covered by the ordinance or any civil or administrative penalty or sanction otherwise imposed by Chapter 431 or other law for products not covered by the ordinance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 6, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK**

Sec. 435.021. IMPORTED MILK. (a) In this section:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(b) A state agency or political subdivision may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States.

(c) This section does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 435.022 by Acts 1989, 71st Leg., ch. 1100, Sec. 5.06(b), eff. Sept. 1, 1989.

## CHAPTER 436. AQUATIC LIFE

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 436.001. SHORT TITLE. This chapter may be cited as the Texas Aquatic Life Act.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.002. DEFINITIONS. In this chapter:

(1) "Approved area" means a molluscan shellfish growing area determined to be acceptable for harvesting of molluscan shellfish for direct marketing according to the National Shellfish Sanitation Program.

(2) "Approved source" means a source of molluscan shellfish acceptable to the director.

(3) "Aquatic life" means animals and plants that live in water.

(4) "Authorized agent" means an employee of the department who is designated by the director to enforce provisions of this chapter.

(5) "Board" means the Texas Board of Health.

(6) "Closed area" means a molluscan shellfish growing area

where the taking including the harvesting for sale, the harvesting for transplant, or the gathering for depuration of molluscan shellfish is temporarily or permanently not permitted. A closed area status may be placed on any one of the five classified area designations established by the National Shellfish Sanitation Program.

(7) "Conditionally approved area" means a molluscan shellfish growing area determined to meet approved area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved area criteria.

(8) "Conditionally restricted area" means a molluscan shellfish growing area determined to meet restricted area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally restricted area is open for transplanting or gathering for depuration only during the times it meets the restricted area criteria and is specified as a conditionally restricted area by the department. A conditionally restricted area is a closed area at all times for harvesting of molluscan shellfish for direct marketing.

(9) "Container" means the physical material in contact with or immediately surrounding molluscan shellfish or crabmeat that confines it into a single unit.

(10) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed other than by picking, packing, and chilling.

(11) "Crabmeat processing license" means a numbered document issued by the department that authorizes a person to process crabmeat for sale.

(12) "Crabmeat processor" means a person who cooks and backs crabs and who picks, packs, or pasteurizes crabmeat.

(13) "Department" means the Texas Department of Health.

(14) "Depletion" means the removal of all existing commercial quantities of market-size molluscan shellfish.

(15) "Depuration" means the process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in molluscan shellfish.

(16) "Depuration plant" means a place where depuration of molluscan shellfish occurs.

(17) "Director" means the executive head of the Texas

Department of Health.

(18) "Growing area" means an area that supports or could support live molluscan shellfish.

(19) "Health authority" means a physician authorized to administer state or local laws relating to public health.

(20) "Label" means written, printed, or graphic matter appearing on a container of molluscan shellfish or crabmeat, including any written, printed, or graphic matter on any wrappers or accompanying any molluscan shellfish or crabmeat.

(21) "Molluscan shellfish" means an edible species of oyster, clam, or mussel that is shucked, in the shell, fresh, or fresh frozen, in whole or in part, as defined by the National Shellfish Sanitation Program.

(22) "National Shellfish Sanitation Program" means the cooperative program by the states, the United States Food and Drug Administration, and the shellfish industry that classifies molluscan shellfish growing areas and certifies interstate molluscan shellfish shippers according to the National Shellfish Sanitation Program Manual of Operations or its successor program and documents.

(23) "Open area" means a molluscan shellfish growing area where harvesting for sale, harvesting for transplant, or gathering for depuration of molluscan shellfish is permitted. An open area status may be placed on any one of the classified area designations established by the National Shellfish Sanitation Program except for a prohibited area.

(24) "Pasteurization plant" means a place where crabmeat is heat-treated in compliance with rules adopted by the board, without complete sterilization, to improve the keeping qualities of the meat.

(25) "Picking plant" means a place where crabs are cooked and edible meat is picked from the crabs.

(26) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, agent, bailee, or custodian for another.

(27) "Prohibited area" means an area where the director finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption. A prohibited area for molluscan shellfish means a molluscan shellfish growing area determined to be unacceptable for transplanting, gathering for depuration, or harvesting of molluscan shellfish. The only molluscan shellfish removal permitted from a

prohibited area is for the purpose of depletion.

(28) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for sale.

(29) "Public water" means all bodies of water that are the property of the state under Section 1.011, Parks and Wildlife Code.

(30) "Restricted area" means a molluscan shellfish growing area that is determined to be unacceptable for harvesting of molluscan shellfish for direct marketing but that is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the area does not meet the restricted area criteria established by the National Shellfish Sanitation Program.

(31) "Sale" means the transfer of ownership or the right of possession of an item to a person for consideration and includes barter.

(32) "Shellfish certificate" means a numbered document issued by the department that authorizes a person to process molluscan shellfish for sale.

(33) "Shellfish processor" means a person who depurates, shucks, packs, or repacks molluscan shellfish.

(34) "Take" means catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.003. AUTHORITY TO DELEGATE POWERS AND DUTIES. (a) The board by rule may delegate a power or duty imposed on the director in this chapter, including the power or duty to issue emergency rules or orders or to render a final administrative decision.

(b) A health authority may delegate any power or duty imposed on the health authority in this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves, unless otherwise restricted by law.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

**SUBCHAPTER B. PROHIBITED ACTS**

Sec. 436.011. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(1) taking, selling, offering for sale, or holding for sale molluscan shellfish from a closed area;

(2) taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area without complying with a rule adopted by the board to ensure that the molluscan shellfish have been purified, unless:

(A) permission is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department; and

(B) the Parks and Wildlife Department furnishes a copy of the transplant permit to the director before transplanting activities begin;

(3) possessing a species of aquatic life taken from a prohibited area while the area was prohibited for that species;

(4) operating as a molluscan shellfish processor without a shellfish certificate for each plant or place of business;

(5) operating as a crabmeat processor without a crabmeat processing license for each plant;

(6) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that has not been picked, handled, packaged, or pasteurized in accordance with the rules adopted by the board;

(7) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat from facilities for the handling and packaging of molluscan shellfish or crabmeat that do not comply with the rules adopted by the board;

(8) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that is not labeled in accordance with the rules adopted by the board;

(9) selling, offering for sale, or holding for sale molluscan shellfish that is not in a container bearing a valid certificate number from a state or nation whose molluscan shellfish certification program conforms to the current Manual of Operations for Sanitary Control of the Shellfish Industry issued by the Food and Drug Administration or its successor, except selling molluscan shellfish removed from a container bearing a valid certificate number



for on-premises consumption; in the event the Texas Molluscan Shellfish Program is found to be out of conformity with the current Manual of Operations, selling, offering for sale, or holding for sale molluscan shellfish in a container bearing a valid Texas certificate number shall not be considered a violation of this chapter provided all other requirements of this chapter are complied with and the shellfish have come from an approved source;

(10) processing, transporting, storing for sale, possessing with intent to sell, offering for sale, or selling molluscan shellfish or crabmeat for human consumption that is adulterated or misbranded;

(11) removing or disposing of a detained or embargoed article in violation of Section 436.028;

(12) altering, mutilating, destroying, obliterating, or removing all or part of the labeling of a container;

(13) adulterating or misbranding molluscan shellfish or crabmeat in commerce;

(14) refusing to permit entry or inspection, to permit the taking of a sample, or to permit access to or copying by an authorized agent of a record required by this chapter;

(15) failing to establish or maintain a record or report required by this chapter or by a rule adopted by the board; or

(16) violating a rule adopted by the board or an emergency rule or order adopted by the director.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 436.021. DEFINITION. In this subchapter, "detained or embargoed article" means molluscan shellfish or crabmeat that has been detained or embargoed under Section 436.028.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.022. INSPECTION. (a) The director, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which molluscan shellfish

or crabmeat is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the molluscan shellfish or crabmeat in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this chapter.

(b) The inspection of an establishment or location is to determine whether the molluscan shellfish or crabmeat:

(1) is adulterated or misbranded;

(2) may not be processed, introduced into commerce, sold, or offered for sale under this chapter or the rules adopted by the board; or

(3) is otherwise in violation of this chapter.

(c) The director, an authorized agent, or a health authority may not inspect:

(1) financial data;

(2) sales data, other than shipment data;

(3) pricing data;

(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or

(5) research data.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.023. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or a rule adopted by the board or a person who is in charge or custody of those records on request shall permit the director, authorized agent, or health authority at all reasonable times to have access to and to copy the records.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.024. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE.

(a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the director, authorized agent, or health authority at all reasonable times to have access to and to copy all records showing:

- (1) the movement in commerce of the molluscan shellfish or crabmeat;
- (2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or
- (3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

(b) The carrier or other person may not refuse access to and copying of the requested records if the request is accompanied by a written statement that specifies the nature or kind of molluscan shellfish or crabmeat to which the request relates.

(c) A carrier is not subject to other provisions of this chapter solely because of the carrier's receipt, carriage, holding, or delivery of molluscan shellfish or crabmeat in the usual course of business as a carrier.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.025. EMERGENCY ORDER. (a) The director may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

- (1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and
- (2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The director may issue the emergency order without notice and hearing if the director or a person designated by the director determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under board rules.

(d) This section prevails over Sections 11.013 and 12.001.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.026. VIOLATION; INJUNCTION. (a) The director, an

authorized agent, or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the director, authorized agent, or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) If the court finds that a person is violating or threatening to violate Section 436.011, the court shall grant injunctive relief.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.027. CIVIL PENALTY. (a) At the request of the director, the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section 436.011.

(b) A person who violates Section 436.011 is liable for a civil penalty not to exceed \$25,000 a day for each violation. Each day of a continuing violation constitutes a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations under this chapter;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person; and

(5) other matters as justice may require.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) Venue for a suit to collect a civil penalty brought under this section is in the municipality or county in which the violation occurred or in Travis County.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The director or an authorized agent may detain or embargo molluscan shellfish or crabmeat if the director or authorized agent believes or has probable cause to believe that the molluscan shellfish or crabmeat:

(1) is adulterated; or

(2) is misbranded so that the molluscan shellfish or crabmeat is dangerous or fraudulent under this chapter.

(b) The director or an authorized agent shall affix to any molluscan shellfish or crabmeat a tag or other appropriate marking that gives notice that the molluscan shellfish or crabmeat is, or is suspected of being, adulterated or misbranded and that the molluscan shellfish or crabmeat has been detained or embargoed.

(c) The tag or marking on a detained or embargoed article must prohibit the removal or disposal of the article unless permission is given by the director, the authorized agent, or a court.

(d) A person may not remove a detained or embargoed article from the premises or dispose of it without permission of the director, the authorized agent, or a court. The director or the authorized agent may permit perishable goods to be moved to a place suitable for proper storage.

(e) The director or an authorized agent shall remove the tag or other marking from a detained or embargoed article if the director or an authorized agent believes that the article is not adulterated or misbranded.

(f) The claimant of a detained or embargoed article may move the article to a secure storage area with the permission of the director or an authorized agent.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE.

(a) The director or authorized agent may order the claimant or the claimant's agent to move a detained or embargoed article to a secure

place to prevent the unauthorized disposal or removal of the article.

(b) If the claimant fails to carry out the order, the director or the authorized agent may move the article.

(c) If the director or the authorized agent moves the article, the director shall assess the cost of removal against the claimant.

(d) The director may request the attorney general to bring an action in the district court in Travis County to recover the costs of removal. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.030. RECALL FROM COMMERCE. (a) The director may order a recall of molluscan shellfish or crabmeat with:

(1) the detention or embargo of molluscan shellfish or crabmeat;

(2) the issuance of an emergency order under Section 436.025; or

(3) both.

(b) The director's recall order may require that the molluscan shellfish or crabmeat be removed to one or more secure areas approved by the director or authorized agent.

(c) The recall order must be in writing and be signed by the director and may be issued:

(1) before or in conjunction with a tag or other marking as provided by Section 436.028;

(2) with an emergency order authorized by Section 436.025; or

(3) both.

(d) The recall order is effective until it expires by its own terms, is withdrawn by the director, is reversed by a court in an order denying condemnation, or is set aside at a hearing authorized by Section 436.025.

(e) The claimant shall pay the costs of the removal and storage of a recalled product. If the claimant or the claimant's agent fails to carry out the recall order, the director may recall the product. The director shall assess the costs of the recall against the claimant.

(f) The director may request the attorney general to bring an action in a district court in Travis County to recover the costs of recall. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.031. CONDEMNATION. If molluscan shellfish or crabmeat is adulterated or misbranded, an action for the condemnation of the molluscan shellfish or crabmeat may be filed in a district court in whose jurisdiction the molluscan shellfish or crabmeat is located.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.032. DESTRUCTION OF MOLLUSCAN SHELLFISH OR CRABMEAT.

(a) The court may order the destruction of sampled, detained, or embargoed molluscan shellfish or crabmeat if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant shall pay the cost of the destruction of the article.

(d) The court shall order the claimant or the claimant's agent to pay court costs, storage fees, and other proper expenses.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.033. CORRECTION BY PROPER LABELING. (a) A court may order the delivery of sampled, detained, or embargoed molluscan shellfish or crabmeat that is misbranded to the claimant for relabeling under the supervision of the director or an authorized agent if:

- (1) the court costs and other expenses have been paid;
- (2) proper labeling can correct the misbranding; and
- (3) the claimant executes a bond, conditioned on the correction of the misbranding by proper labeling.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order the return of the molluscan shellfish or crabmeat to the claimant if the director or an authorized agent represents to the court that the molluscan shellfish or crabmeat no longer violates this chapter and that the expenses of supervision are paid.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.034. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against a person who violates Section 436.011 or an order issued under this chapter.

(b) In determining the amount of the penalty, the director shall consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) the hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) other matters as justice may require.

(c) The penalty may not exceed \$25,000 a day for each violation.

(d) Each day of a continuing violation constitutes a separate violation.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) The director may assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) The director shall issue an order requiring a person to pay a penalty assessed under this section.

(e) The director may consolidate a hearing held under this section with another proceeding.



Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order is issued under Section 436.035(d), the director shall notify the person against whom the penalty is assessed of the order and the amount of the penalty.

(b) Not later than the 30th day after the date notice of the order is given to the person, the person shall:

(1) pay the penalty in full; or

(2) seek judicial review of the amount of the penalty, the findings of the director, or both.

(c) If the person seeks judicial review, the person shall:

(1) send the amount of the penalty to the director for placement in an escrow account; or

(2) post with the director a bond for the amount of the penalty.

(d) A bond posted under this section must be in a form approved by the director and must be effective until judicial review of the order or decision is final.

(e) A person who does not send the money to the director or post the bond within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

(f) The attorney general, at the request of the director, may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the director shall:

(1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.038. CRIMINAL PENALTY; DEFENSES. (a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence commits an unlawful act under Section 436.011.

(b) A violation of Section 436.011(1), (2), or (3) is a Class B Parks and Wildlife Code misdemeanor under Section 12.405, Parks and Wildlife Code. Each day of a continuing violation constitutes a separate offense. Commissioned officers of the Parks and Wildlife Department shall enforce Sections 436.011(1), (2), and (3).

(c) If it is shown at trial that the defendant has been convicted once within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Class A Parks and Wildlife Code misdemeanor under Section 12.404, Parks and Wildlife Code.

(d) If it is shown at trial that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Parks and Wildlife Code felony under Section 12.407, Parks and Wildlife Code.

(e) A violation of Section 436.011(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) is a Class A misdemeanor. Each day of a continuing violation constitutes a separate offense.

(f) A person is not subject to the penalties of Subsection (e) if the person received molluscan shellfish or crabmeat in commerce and delivered or offered to deliver the molluscan shellfish or crabmeat in good faith, unless the person refuses to furnish on request of the director, an authorized agent, or a health authority the name and address of the person from whom the product was received and copies of any documents relating to the receipt of the product.

(g) A publisher, radiobroadcast licensee, or agency or medium for the publication or broadcast of an advertisement, except the harvester, processor, distributor, or seller of molluscan shellfish or crabmeat to which a false advertisement relates, is not liable under this section for the publication or broadcast of the false advertisement unless the person has refused to furnish, on the request of the director, the name and address of the harvester, processor, distributor, seller, or advertising agency residing in this state who caused the person to publish or broadcast the advertisement.

(h) A person is not subject to the penalties of Subsection (e)

for a violation of Section 436.011 involving misbranded molluscan shellfish or crabmeat if the violation exists only because the product is misbranded because of a mistake in advertising, unless the violation is committed with intent to defraud or mislead.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney general or a district, county, or municipal attorney to whom the director, an authorized agent, or a health authority reports a violation of this chapter shall prosecute without delay.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.040. MINOR VIOLATION. This chapter does not require the director, an authorized agent, or a health authority to report for prosecution a minor violation of this chapter if the director, authorized agent, or health authority believes that the public interest is adequately served by a written warning.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER D. ADULTERATED AQUATIC LIFE**

Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of aquatic life is adulterated if it has been taken from an area declared prohibited for that species by the director.

(b) Molluscan shellfish or crabmeat is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless the substance is a naturally occurring substance and the quantity of the substance in the molluscan shellfish or crabmeat does not ordinarily render the substance injurious to health;

(2) it consists in whole or in part of a diseased, contaminated, filthy, or putrid substance or if it is otherwise unfit for human consumption;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered diseased, unwholesome, or injurious

to health;

(4) it is in whole or in part the product of diseased aquatic life or has died otherwise than by taking;

(5) its container is made in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

(6) it has been intentionally exposed to radiation, unless the use of the radiation complied with a regulation or an exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(7) a substance has been substituted in whole or in part for it;

(8) damage to or inferiority of the product has been concealed;

(9) a substance has been added, mixed, or packed to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(10) it contains a chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative that is not approved by the Animal Plant Health Inspection Service or by rules of the board;

(11) the molluscan shellfish have been taken from a closed area;

(12) the molluscan shellfish have been taken from a restricted or conditionally restricted area and have not been purified under the rules adopted by the board;

(13) the molluscan shellfish have been processed by a person without a shellfish certificate;

(14) the molluscan shellfish have not been handled and packaged in accordance with the rules adopted by the board;

(15) the crabmeat has been processed by a person without a crabmeat processing license; or

(16) the crabmeat was not picked, packed, or pasteurized in accordance with the rules adopted by the board.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER E. MISBRANDING**

Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT.

Molluscan shellfish or crabmeat is misbranded if:

- (1) its labeling is false, misleading, or fails to conform with the requirements of Section 436.081;
- (2) it is offered for sale under the name of another food;
- (3) its container is made, formed, or filled so as to be misleading;
- (4) a word, statement, or other information required by this chapter or a rule adopted under this chapter to appear on a label is not prominently and conspicuously placed on the label and is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
- (5) it does not have a label containing:
  - (A) the name, address, and certification or license number of the processor;
  - (B) an accurate statement in a uniform location on the principal display panel of the quantity of the contents in terms of weight, measure, or numerical count; and
  - (C) a date as provided by rules adopted by the board.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER F. LABELING AND PACKAGING**

Sec. 436.081. FAIR PACKAGING AND LABELING. (a) A label on molluscan shellfish or crabmeat shall conform to the requirements for the declaration of net quantity of contents under Section 1453, Fair Packaging and Labeling Act (15 U.S.C. Section 1453), and the regulations adopted under that Act.

(b) The label on a package of molluscan shellfish or crabmeat that represents the number of servings contained in the package shall state the net quantity in terms of weight, measure, or numerical count of each serving.

(c) A person may not distribute or cause to be distributed in commerce any molluscan shellfish or crabmeat if a qualifying word or phrase appears with the statement of the net quantity of contents required by Subsection (a). A supplemental statement at another place on the package may contain descriptions in nondeceptive terms of the net quantity of contents, except the supplemental statement of net quantity of contents may not include a term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the

shellfish or crabmeat in the package.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.082. FALSE ADVERTISEMENT. An advertisement of molluscan shellfish or crabmeat is false if it is false or misleading in any manner.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER G. AQUATIC LIFE FROM PROHIBITED AREAS**

Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The director by order shall declare a body of public water to be a prohibited area if:

(1) the director finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or

(2) aquatic life from a prohibited area may have been transferred to that body of public water.

(b) The director shall modify or revoke an order according to the results of a sanitary, chemical, or bacteriological survey conducted by the department. The director shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas on request.

(c) The director shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

#### **SUBCHAPTER H. MOLLUSCAN SHELLFISH**

Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The director by order shall designate an area that is coastal water according to the rules of the Parks and Wildlife Commission as an approved area, a conditionally approved area, a restricted area, a conditionally restricted area, or a prohibited area, according to the classification categories in the current National Shellfish

Sanitation Program Manual of Operations or its successor. Coastal water is a prohibited area for the taking of molluscan shellfish unless designated otherwise by the director.

(b) The director shall prohibit the taking of molluscan shellfish for a specified period from water to which molluscan shellfish may have been transferred from a restricted or conditionally restricted area.

(c) The director by order shall designate growing areas as closed areas or open areas. The director shall modify or revoke an order according to the results of sanitary and bacteriological surveys conducted by the department. The director shall file the order in the department's office and shall furnish without charge a copy of the order describing the open or closed area on request.

(d) The director shall conspicuously outline the classifications of areas for the taking of molluscan shellfish on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.102. DEPURATION. (a) The director may allow depuration by artificial means of molluscan shellfish taken from a restricted or conditionally restricted area, subject to the rules adopted by the board and under the supervision the director considers necessary to protect public health.

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted by the board under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.103. FEE ON OYSTER SALES; PENALTIES. (a) The first certified shellfish dealer who harvests, purchases, handles, stores, packs, labels, unloads at dockside, or holds oysters taken from the water of this state shall pay the state a fee of \$1 for each barrel

of oysters harvested, purchased, handled, or processed by the certified shellfish dealer.

(b) For purposes of assessing the fee required by this section, three 100-pound containers of oysters is the equivalent of one barrel of oysters. A certified shellfish dealer may not purchase or pack oysters in containers that, when packed, exceed 110 pounds in weight. A dealer who violates this subsection is liable for a penalty of \$5 for each container that exceeds 110 pounds.

(c) A certified shellfish dealer shall pay a fee or penalty imposed by Subsection (a) or (b) not later than the 20th day of the month following the month in which the barrel of oysters was handled. A dealer who fails to pay the fee or penalty in full within the prescribed period is liable for the amount of the fee or penalty and an additional penalty of 10 percent of the amount of the fee or penalty due. On certification by the comptroller that a fee is past due, the department may suspend, until the fee, penalty, or additional penalty is paid, the shellfish certificate of a certified shellfish dealer who fails to timely pay the fee, penalty, or additional penalty in full. The department, on certification from the comptroller that a certified shellfish dealer has refused to pay a fee, penalty, or additional penalty on written demand, may revoke the shellfish certificate of a certified shellfish dealer who refuses to pay a fee, penalty, or additional penalty.

(d) The comptroller shall collect fees and penalties under this section and may adopt rules, forms, and procedures for submission of fees and penalties under this section. Each month the comptroller shall report to the department the fees and penalties that are submitted to the comptroller.

(e) Before any other disposition of the fees and penalties collected under this section is made, two percent of the amount of the fees and penalties shall be deposited in the state treasury for appropriation for the use of the comptroller in the administration and enforcement of this section. The remainder of the fees and penalties collected under this section shall be deposited to the credit of the oyster sales account in the general revenue fund to be allocated each year for oyster-related activities, including:

- (1) collecting bay water and shellfish meat samples;
- (2) contracting for sample analysis for classification and opening or closing of oyster harvesting areas;
- (3) marking the boundaries of areas that are designated



open or closed under this subchapter;

(4) studying oyster diseases and other concerns affecting the availability of oysters for harvest;

(5) studying and analyzing organisms that may be associated with human illness and that can be transmitted through the consumption of oysters;

(6) contributing to the support of the oyster shell recovery and replacement program created under Section 76.020, Parks and Wildlife Code; and

(7) other oyster-related activities authorized or required by this chapter.

(f) After deducting the amount deposited into the state treasury for the comptroller's use under Subsection (e), the comptroller at the beginning of each state fiscal year shall allocate \$100,000 of the unencumbered balance deposited to the credit of the oyster sales account in the general revenue fund to Texas A&M University at Galveston for use in performing the activities described by Subsection (e)(5). The remainder of the money in the oyster sales account may be allocated only for the purposes described by Subsection (e).

(g) Subtitles A and B, Title 2, Tax Code, apply to the comptroller's administration, collection, and enforcement of this section to the same extent as if the fee imposed under this section were a tax imposed under Title 2, Tax Code.

(h) In monitoring compliance with the payment of fees imposed under this section, the comptroller shall monthly or annually, as determined by the comptroller, compare records of fees collected under this section to data collected by the Parks and Wildlife Department relating to oyster barrel purchases. If the comptroller finds a discrepancy between the two sources of information, the comptroller may consult the dealer's log required by the National Shellfish Sanitation Program to resolve the discrepancy. The comptroller may use the process described by this subsection in place of any other administrative process used by the comptroller in determining compliance with this section.

(i) A finding by the comptroller under Subsection (h) of a discrepancy that reflects an underreporting of oysters harvested, purchased, handled, or processed by a dealer constitutes prima facie evidence of a violation of this section in any administrative proceeding under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1999, 76th Leg., ch. 1298, Sec. 2, eff. June 18,  
1999; Acts 2001, 77th Leg., ch. 28, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 965 (H.B. 1903), Sec. 1, eff.  
September 1, 2013.

Sec. 436.104. OYSTER PROGRAM. (a) The department shall conduct sanitary surveys, bay water and shellfish meat sampling, and any other activities that are necessary to classify the bays from which oysters are harvested from private leases or public reefs as authorized by Section 436.101.

(b) The department shall conduct reasonable and prudent sampling activities at the earliest possible time following the designation as a closed area of an area from which oysters are harvested from private leases or public reefs:

(1) if a question exists about the closure, to confirm the need for the closure; or

(2) if there is reason to believe that the sampling will result in opening the area.

(c) In implementing the oyster program, the department shall follow standards that are at least as stringent as the guidelines adopted by the National Shellfish Sanitation Program. The department's approach shall be consistent with the purpose and intent of the National Shellfish Sanitation Program and the federal Food and Drug Administration policy statements regarding the consumption of raw molluscan shellfish.

(d) Until *Vibrio parahaemolyticus* guidelines are formally adopted into the National Shellfish Sanitation Program, the department shall follow standards that are at least as stringent as guidelines of the Interim Control Plan for *Vibrio parahaemolyticus* of the Interstate Shellfish Sanitation Conference for the purpose of designating harvest areas as closed areas related to *Vibrio parahaemolyticus*.

(e) The department shall open harvest areas designated as closed areas due to excessive levels of *Vibrio parahaemolyticus* in shellfish meat samples when the levels of *Vibrio parahaemolyticus* in the shellfish meat samples return to baseline levels.

(f) The department shall open harvest areas designated as

closed areas due to sporadic non-outbreak illnesses as specified in the Interim Control Plan when the levels in shellfish meats return to baseline levels or, if tdh+ serotypes were confirmed as the cause of the illnesses, when the virulent serotypes of *Vibrio parahaemolyticus* are absent in two consecutive samples of shellfish meats collected from the *Vibrio parahaemolyticus* sample stations in the closed area.

(g) The department shall open harvest areas designated as closed areas due to a confirmed *Vibrio parahaemolyticus* outbreak when the department determines that *Vibrio parahaemolyticus* strains of virulent serotypes are absent in those situations where 03:K6 or other tdh+ serotypes were confirmed as the cause of the outbreak. For purposes of this subsection, in Galveston Bay, *Vibrio parahaemolyticus* virulent strains shall be considered absent when 25 shellfish meat samples from any delineated harvest area that has been designated as a closed area do not result in reporting of the virulent strain that caused the outbreak.

(h) If a second confirmed outbreak of *Vibrio parahaemolyticus* illness occurs in an area, the department shall open a harvest area designated as closed when 50 shellfish samples do not result in the reporting of the virulent strain that caused the outbreak.

(i) If harvest areas designated as closed areas as a result of *Vibrio parahaemolyticus* cannot be opened as a result of the sampling under Subsection (f) or (g), the areas may be opened when environmental conditions develop that are unfavorable for *Vibrio parahaemolyticus* growth or when environmental conditions shift to conditions that are historically unrelated to outbreaks of *Vibrio parahaemolyticus*.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.105. TEMPERATURE REQUIREMENTS. Following initial refrigeration after unloading from a harvest boat, molluscan shellfish shall be refrigerated in air temperatures at or below 45 degrees Fahrenheit at all times except during transfer from one storage area or transportation vehicle to another. Except for an immediate transfer, molluscan shellfish may not remain unrefrigerated during transfer from one storage area or transportation vehicle to another.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.106. TEMPERATURE ABUSE. If temperature abuse of oysters associated with possible *Vibrio parahaemolyticus* illnesses is identified at any point in the market chain from harvest to consumer, the department may not designate a harvest area as a closed area if the temperature abuse is the probable cause of the illness. This section does not preclude closures for investigations conducted in accordance with the National Shellfish Sanitation Program that are necessary to protect public health. If a harvest area has been designated as a closed area because the investigation could not be completed within the time required in the National Shellfish Sanitation Program and temperature abuse is determined, as a result of the investigation, to be the probable cause of the illnesses, the harvest area must be immediately designated as an open area.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.107. TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council is created.

(b) The council is composed of:

(1) two members appointed by the board as nominated by the Texas Oyster Growers and Dealers Association;

(2) one member appointed by the board as nominated by the Coastal Oyster Leaseholder's Association;

(3) two members appointed by the board from a list of oyster dealers who have held a shellfish certificate in this state for not less than six months of each of the three years preceding the nomination and who are certified at the time of appointment;

(4) one representative appointed by the chairman of the Interstate Shellfish Sanitation Conference; and

(5) three consumer members, including one person professionally licensed or with work experience in the field of environmental survey, environmental sanitation, environmental engineering, or a similar field related to environmental or pollution conditions and their effect on molluscan shellfish harvest areas, appointed by the speaker of the house of representatives.

(c) Members of the Texas Oyster Council serve one-year terms expiring August 31 of each year and may be reappointed at the end of

a term.

(d) A member of the Texas Oyster Council may not receive compensation for service on the council, but is entitled to reimbursement of expenses incurred by the member while conducting the business of the council, as provided by the General Appropriations Act.

(e) A person is not eligible for appointment as a consumer member of the Texas Oyster Council if the person or the person's spouse:

(1) is a harvester, processor, or wholesaler regulated under this chapter;

(2) is employed by a harvester, processor, or wholesaler regulated under this chapter;

(3) is a retailer of molluscan shellfish; or

(4) is employed by a retailer of molluscan shellfish.

(f) The Texas Oyster Council shall elect a presiding officer from among its members.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.  
Amended by Acts 2001, 77th Leg., ch. 28, Sec. 2, eff. Sept. 1, 2001.

Sec. 436.108. POWERS AND DUTIES OF TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council shall:

(1) advise the board on the criteria used by the director under Section 436.101 to designate growing areas as open or closed areas;

(2) advise the board on the development of standards and procedures relating to the licensing of molluscan shellfish processors under this chapter;

(3) advise the board on the content of the rules adopted to implement the provisions of this chapter relating to molluscan shellfish;

(4) perform any other functions requested by the board in implementing and administering the provisions of this chapter relating to molluscan shellfish; and

(5) review information brought before the council relating to molluscan shellfish.

(b) The Texas Oyster Council is entitled to:

(1) obtain information that is furnished to the department

or developed by the department as part of an investigation of a food-borne illness that is suspected of being related to molluscan shellfish, including:

- (A) location and handling practices where suspect food may have been served;
- (B) product labeling and records;
- (C) distribution agent, methods, and handling practices;
- (D) sources of product;
- (E) sample collection and laboratory analysis; and
- (F) any other nonmedical information that may aid in determining causes or routes of transmission of food-borne illness or suspected food-borne illness; and

(2) review the information provided under Subdivision (1) and report to the department on any matter of concern.

(c) The Texas Oyster Council may establish procedures for:

- (1) meetings of the council;
- (2) submission, consideration, and resolution of issues before the council; and
- (3) reporting relating to the council's activities.

(d) The Texas Oyster Council may meet at the request of the department, may meet periodically to review completed activities of the department, or may meet to review ongoing activities of the department if the department appears to have exceeded the guidelines established in the National Shellfish Sanitation Program.

(e) A member of the Texas Oyster Council who receives information under Subsection (b) from confidential communications or records, as identified by the department, may not disclose the information outside of the council or the department. The department, by providing to the council public information that is confidential or otherwise excepted from public disclosure under law, does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information.

(f) The Texas Oyster Council is subject to Chapter 551, Government Code. The Texas Oyster Council is not required to conduct an open meeting to deliberate confidential communications and records provided under this section relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish.

(g) A report produced by the Texas Oyster Council is public information.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

**SUBCHAPTER I. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING  
AUTHORITY**

Sec. 436.111. DEFINITIONS. In this subchapter:

(1) "Certificate" means a shellfish certificate issued by the department.

(2) "License" means a crabmeat processing license issued by the department.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.112. RULEMAKING AUTHORITY. The board may adopt rules for the enforcement of this chapter. The board shall adopt rules establishing specifications for molluscan shellfish processing and crabmeat processing and shall furnish without charge printed copies of the rules on request.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.113. CERTIFICATION AND LICENSING PROCEDURES. (a) A person may not operate as a molluscan shellfish or crabmeat processor unless the person submits an application for a certificate or a license to the department according to rules adopted by the board and receives a certificate or license for each plant or place of business.

(b) When an application has been properly filed with the department, the director or an authorized agent shall inspect the property identified in the application, including buildings and equipment, and the operating procedures under which the product is processed.

(c) The director shall issue a certificate or license to a person who operates a plant or place of business that conforms to the requirements of this chapter and rules adopted by the board.

(d) A certificate is nontransferrable and expires at 11:59 p.m.

on August 31 of each year.

(e) A license is nontransferrable and expires at 11:59 p.m. on the last day of February each year.

(f) A person shall apply for a new certificate or license each year for each plant or place of business.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.114. REFUSAL TO CERTIFY OR LICENSE; SUSPENSION OR REVOCATION OF CERTIFICATE OR LICENSE. (a) After notice to the applicant and opportunity for a hearing, the department may refuse an application for a certificate or a license or may suspend or revoke a certificate or license.

(b) The board by rule shall establish minimum standards for a certificate or license and criteria for the refusal to issue a certificate or license and the suspension or revocation of a certificate or license.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.115. HEARINGS AND APPEALS. (a) A hearing under this chapter is governed by the procedures for a contested case hearing under Chapter 2001, Government Code and the board's formal hearing rules.

(b) An appeal from a final administrative decision under this chapter shall be conducted under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

**CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS**

Sec. 437.001. DEFINITIONS. In this chapter:

(1) "Board" means the executive commissioner.

(2) "Commissioner" means the commissioner of health.

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking



the item in an oven.

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:

(A) produces at the individual's home, subject to Section 437.0196:

(i) a baked good that is not a potentially hazardous food, as defined by Section 437.0196;

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickles;

(xiv) mustard;

(xv) roasted coffee or dry tea; or

(xvi) a dried herb or dried herb mix;

(B) has an annual gross income of \$50,000 or less from the sale of food described by Paragraph (A);

(C) sells the foods produced under Paragraph (A) only directly to consumers at the individual's home, a farmers' market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3-b) "Farm stand" means a premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described by Subdivision (2-b)(A).

(4) "Food," "food service establishment," "retail food

store," "mobile food unit," "roadside food vendor", and "temporary food service establishment" have the meanings assigned to those terms by rules adopted by the board under this chapter.

(5) "Home" means a primary residence that contains a kitchen and appliances designed for common residential usage.

(6) "Produce" means fresh fruits or vegetables.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 1, eff. September 1, 2013.

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A county or public health district may enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This chapter does not authorize a county or public health district to adopt orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT. To enforce state law and rules adopted under state law, the commissioners court of a county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT. (a) A public health district that is established by at least one county and one or more municipalities in the county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district.

(b) If the public health district has an administrative board, the administrative board must adopt the order in accordance with its procedures.

(c) If the district does not have an administrative board, the governing body of each member of the district must adopt the order. The order is effective throughout the public health district on the 30th day after the first date on which the governing bodies of all members have adopted the order.

(d) This chapter does not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.005. PUBLIC HEARING. (a) A commissioners court, governing body, or administrative board, as applicable, may adopt an order under Section 437.003 or 437.004 only after conducting a public hearing on the proposed order.

(b) At least two weeks' public notice must be given before a public hearing may be held.

(c) The notice must be published in a newspaper of general circulation in the county or public health district on three consecutive days and be printed in 10 point bold-faced type.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0055. PERMIT FROM DEPARTMENT REQUIRED IN AREAS NOT REGULATED BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A person may not operate a food service establishment, retail food store, mobile food unit, or temporary food service establishment located in an area in which a county or public health district does not require a permit or

conduct inspections under this chapter unless the person has a permit issued by the department.

(b) A person required to obtain a permit under Subsection (a) must apply annually for the permit and must pay any fees required by the department.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.

Sec. 437.0056. RULEMAKING AUTHORITY. The board may adopt rules for the efficient enforcement of this chapter by the department in an area not regulated under this chapter by a county or public health district. The board by rule shall establish minimum standards for granting and maintaining a permit in an area not regulated under this chapter by a county or public health district. The commissioner may refuse an application for permit or suspend or revoke a permit in an area not regulated under this chapter by a county or public health district.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.

Sec. 437.0057. REGULATION OF FOOD HANDLERS AND OTHER FOOD SERVICE EMPLOYEES BY COUNTIES, PUBLIC HEALTH DISTRICTS, AND THE DEPARTMENT. (a) A county, a public health district, or the department may require certification under Subchapter D, Chapter 438, for each food handler who is employed by a food service establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county, the public health district, or the department. This section applies without regard to whether the food service establishment is at a fixed location or is a mobile food unit.

(b) The requirements of certification under this section may not be more stringent than the requirements of Subchapter D, Chapter 438.

(c) A county, a public health district, or the department may not require an establishment that handles only prepackaged food and does not prepare or package food to employ certified food handlers under this section.

(d) A county, a public health district, or the department may exempt a food service establishment from the requirement that the

county, public health district, or department has imposed under Subsection (a) if the county, the public health district, or the department determines that the application of Subsection (a) to that establishment is not necessary to protect public health and safety.

(e) A county, a public health district, or the department may require a food service establishment to:

(1) post a sign in a place conspicuous to employees, in a form adopted by the executive commissioner of the Health and Human Services Commission, describing a food service employee's responsibilities to report certain health conditions to the permit holder under rules adopted by the executive commissioner; or

(2) require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

Added by Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. 3012), Sec. 1, eff. September 1, 2009.

Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED. A food service establishment or retail food store may not be required under this chapter to obtain more than one permit for each location.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT. A county or public health district may not require a nonprofit organization to obtain a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0073. MEDALLION FOR MOBILE FOOD UNITS IN CERTAIN POPULOUS MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.5 million or more.

(b) Any person desiring to operate one or more mobile food units in a municipality subject to this section other than restricted operations mobile food units shall obtain an individual medallion for each operating mobile food unit from the health officer of the municipality. Each medallion will be issued unit-by-unit only after

an inspection reveals satisfactory compliance with the provisions of this chapter and applicable municipal regulations or ordinances relating to mobile food units. The medallions shall remain the property of the municipality.

(c) A person may not operate or cause to be operated any mobile food unit that does not possess a valid medallion issued by the health officer.

(d) A medallion shall be affixed by the health officer or the health officer's authorized agents on the mobile food unit in a conspicuous place where it can be viewed by patrons.

(e) Application for a medallion shall be made on forms provided by the health officer and must include:

- (1) the applicant's full name and mailing address;
- (2) the address of the location at which the mobile food unit is stationed when not in use;
- (3) the business name and address of the commissary or other fixed food service establishment from which potentially hazardous food supplies are obtained;
- (4) the address of the servicing area;
- (5) a description of the mobile food unit that includes the manufacturer's make, model, and serial number;
- (6) the vehicle's state registration number; and
- (7) the signature of the applicant.

(f) All of the provisions of this chapter and applicable municipal regulations or ordinances pertaining to food service establishments apply to the commissary or other fixed food service establishment from which the food supplies are obtained. Any suspension or revocation of the food dealer's permit for a food service establishment is cause for suspension or revocation of the medallion of any mobile food unit that is supplied or serviced by the establishment.

Added by Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 1, eff. June 19, 2009.

Sec. 437.0074. MOBILE FOOD UNITS IN CERTAIN POPULOUS COUNTIES.

(a) A county with a population of at least 2.8 million, or a municipality or public health district in the county, shall require a mobile food unit to:

(1) return to the food service establishment or commissary from which the unit operates within the 24-hour period preceding operation of the mobile food unit to have cleaning and other services performed on the unit; and

(2) obtain, on completion of an inspection following servicing, written documentation that the mobile food unit has been serviced daily as required by Subdivision (1).

(b) A county, municipality, or public health district that has installed an electronic tagging system shall register and record confirmation that the unit has been serviced as required by Subsection (a)(1).

(c) A municipality with a population of 1.5 million or more in a county with a population of 2.8 million or more shall require a mobile food unit, other than a mobile food unit that handles only prepackaged food and does not prepare or package food, to obtain a time and date stamp on the documentation required under Subsection (a)(2) from a time and date stamp unit that is constructed to prevent tampering and approved by the municipality's governing body. A record kept by the municipality regarding the time and date stamp on the documentation under Subsection (a)(2) by means of an electronic tagging system under Subsection (b) controls if that record is inconsistent with the record kept by the mobile food unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1276 (H.B. 3672), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 2, eff. January 1, 2010.

Sec. 437.0075. FOOD MANAGERS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least 2.8 million may require a trained food manager to be on duty during the operating hours of a food establishment.

(b) The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438.

(c) A food establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 7, eff. June 19, 1999.

Sec. 437.0076. CERTIFIED FOOD MANAGER. (a) A county or public health district may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that holds a permit issued by the county or public health district to employ a food manager certified under Subchapter G, Chapter 438.

(b) The board may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that is required to be operated under a permit under Section 437.0055 to employ a food manager certified under Subchapter G, Chapter 438.

(c) An establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(d) The board by rule may exempt establishments other than the establishments described by Subsection (c) from the requirement imposed under this section if the board determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(e) A county or public health district may exempt establishments other than the establishments exempt under Subsections (c) and (d) from the requirement imposed by the county or public health district under this section if the county or public health district determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(f) A child-care facility, as that term is defined by Section 42.002, Human Resources Code, is exempt from the requirements imposed under this section.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 1, eff. Sept. 1, 2001.

Sec. 437.008. PERMIT RENEWAL. A county or public health district may require the annual renewal of a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.009. INSPECTIONS. Authorized agents or employees of



the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

- (1) state law, including a requirement to hold and display written authorization under Section 437.021;
- (2) rules adopted under state law; and
- (3) orders adopted by the department, county, or district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 1, eff. June 15, 2007.

Sec. 437.0095. DETENTION. The commissioner or an authorized agent may detain an article of food that is located on the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment and is adulterated or misbranded under Chapter 431.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION.

(a) Before issuing a permit, a county or public health district may require an applicant to provide plans of the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant.

(b) The county or public health district may deny the permit after initial inspection only if the applicant is not in compliance with the plans approved by the county or district.

(c) If the county or public health district finds on inspection that an applicant is not in compliance with state law and rules adopted under state law, the county or public health district may reinspect the applicant at a later date to determine if the applicant is in compliance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER. (a) When a county or public health district requires a permit, the county or district shall make an initial inspection of the facilities of any existing entity applying for the permit.

(b) An existing entity is entitled to continue to operate pending its initial inspection.

(c) If the county or public health district determines on inspection that an entity does not meet the standards established by state law or rules adopted under state law, the county or district may start revocation proceedings as if the entity had obtained a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.012. COUNTY AND PUBLIC HEALTH DISTRICT FEES. (a) A county or public health district may require the payment of a fee for issuing or renewing a permit.

(b) Except as provided by Subsection (f), the fee charged by a county or public health district for issuing or renewing a permit may not exceed \$150.

(c) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(d) Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits.

(e) This section does not apply to a county or public health district covered by Section 437.0123.

(f) A county or public health district may, by rule or order, adopt a variable scale to determine the fee charged for a permit under this section. In adopting a rule or order under this subsection, the county or public health district may consider:

(1) the size of the food service establishment, retail food store, mobile food unit, or roadside food vendor;

(2) the number of people employed at the food service establishment, retail food store, mobile food unit, or roadside food vendor; and

(3) the gross sales of the food service establishment, retail food store, mobile food unit, or roadside food vendor.

(g) A fee charged under Subsection (f) may not exceed \$300.

(h) The fee charged to a child care facility under this section may not exceed \$150.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 156, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 72, Sec. 1, eff. Sept. 1, 2001.

Sec. 437.0123. COUNTY AND PUBLIC HEALTH DISTRICT FEES IN CERTAIN POPULOUS COUNTIES. (a) A county that has a population of at least 2.8 million or a public health district at least part of which is in a county that has a population of at least 2.8 million may require the payment of a fee for issuing or renewing a permit or for performing an inspection to enforce this chapter or a rule adopted under this chapter. A county with a population of at least 2.8 million may require a trained food manager to be on duty during each day of operation of a food service establishment. The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438. A food service establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(b) A county or public health district that requires payment of a fee under Subsection (a) shall set the fee in an amount that allows the county or district to recover at least 50 percent of the annual expenditures by the county or district for:

(1) reviewing and acting on a permit;

(2) amending and renewing a permit; and

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter.

(c) Notwithstanding Subsection (b), the fee charged by a county or public health district may not exceed the highest fee charged by a municipality in the county or public health district or \$300,

whichever amount is less.

(d) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(e) Fees deposited as provided by this section may be spent only for a purpose described by Subsection (b).

Added by Acts 1997, 75th Leg., ch. 156, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 480, Sec. 1, eff. Aug. 30, 1999.

Sec. 437.0125. DEPARTMENT FEES. (a) The department shall collect fees for:

- (1) filing, renewing, or amending a permit; and
- (2) an inspection performed to enforce this chapter or a rule adopted under this chapter.

(b) The department may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures by the department for:

- (1) reviewing and acting on a permit;
- (2) amending and renewing a permit;
- (3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and
- (4) implementing and enforcing this chapter, including a rule or order adopted or a license issued by the department.

(d) The department shall spend not less than 50 percent of the permit fees collected to inspect facilities and to enforce and administer this chapter.

(e) All permit fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee fund.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 4, eff. Sept. 1, 1993.

Sec. 437.013. AUDITED STATEMENT. (a) A county or public health district shall file an audited statement with the Texas Department of Health on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this chapter, all expenditures of funds, and fund balances.

(c) A county or public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit until the statement is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if the county or district finds that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit that afford due process to the applicant or permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0145. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend the license of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or order the immediate closing of the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment if:

(1) the department finds the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the public.

(b) An order suspending a license or closing a food service establishment, retail food store, mobile food unit, roadside food

vendor, or temporary food service establishment under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(c) An order suspending a license or ordering an immediate closing of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is valid for 10 days after the effective date of the order.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0155. DEPARTMENT INJUNCTION. (a) If it appears that a person has violated, is violating, or threatens to violate this chapter or a rule adopted under this chapter, the department may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

(b) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that:

(1) a person is violating or threatening to violate this chapter or a rule or order adopted under this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(c) On the department's request, the attorney general shall institute a suit in the name of the state for injunctive relief.

(d) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(e) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.016. CRIMINAL PENALTY: VIOLATION OF COUNTY AND PUBLIC HEALTH DISTRICT PERMIT REQUIREMENTS. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 5, eff. Sept. 1, 1993.

Sec. 437.0165. CRIMINAL PENALTY: VIOLATION OF DEPARTMENT PERMIT REQUIREMENT. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or temporary food service establishment without a permit that is required by the department under Section 437.0055.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.018. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty against a person who holds a permit or who is regulated under this chapter and who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$10,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the order is issued, the commissioner shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the commissioner by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice



of the hearing to the person. An administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(1) The commissioner on receipt of a copy of an affidavit under

Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH DISTRICT OR COUNTY. (a) The director of a public health district or the commissioners court of a county may impose an administrative penalty on a person the district or county requires to hold a permit under Section 437.003 or 437.004 if the person violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed \$500 per day, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs.

(d) Not later than the 20th day after the date the person receives notice of the penalty, the person in writing may:

- (1) accept the determination and pay the recommended penalty of the director or commissioners court; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) The justice of the peace for the justice precinct in which the retail food store or food establishment is located or the mobile food establishment or roadside food vendor is based shall hold a hearing requested under Subsection (d).

(f) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(g) If the court does not sustain the finding that a violation

occurred, the court shall order that a penalty is not owed.

(h) If the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount be remitted to the person.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An administrative penalty may be imposed for a violation of this chapter or a rule or order under this chapter by the state under Section 437.018 or by the director of a public health district or commissioners court of a county under Section 437.0185, but not both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.019. EXEMPTION FOR CERTAIN BED AND BREAKFAST ESTABLISHMENTS. (a) Except as provided by Subsection (c), a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests is not a food service establishment for purposes of this chapter. An owner or manager of a bed and breakfast establishment covered by this subsection shall successfully complete a food manager's certification course accredited by the department.

(b) Except as provided by Subsection (c), a bed and breakfast establishment that has more than seven rooms for rent, or that provides food service other than breakfast to its overnight guests, is a food service establishment for purposes of this chapter but may not be required to meet all criteria applicable to a larger food service establishment such as a restaurant. The board, commissioners court, governing body, or administrative board, as applicable, shall adopt minimum standards for a bed and breakfast establishment covered by this subsection.

(c) A bed and breakfast establishment that provides food service other than to overnight guests is a food service establishment for purposes of this chapter and is subject to all rules and regulations applicable to a food service establishment.

Added by Acts 1995, 74th Leg., ch. 689, Sec. 1, eff. June 15, 1995.

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter.

(b) The exemption provided by Subsection (a) does not affect the application of Sections 431.045, 431.0495, and 431.247 authorizing the department or other local health authority to act to prevent an immediate and serious threat to human life or health.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 2, eff. September 1, 2013.

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS. (a) A local government authority, including a local health department, may not regulate the production of food at a cottage food production operation.

(b) Each local health department and the department shall maintain a record of a complaint made by a person against a cottage food production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 4, eff. September 1, 2013.

Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by Section 437.001(2-b)(A) sold by a cottage food production operation must be packaged in a manner that prevents product contamination, except that a food item is not required to be packaged if it is too large or

bulky for conventional packaging.

(b) The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b)(A) that the operation sells to consumers. The label must include:

(1) the name and address of the cottage food production operation; and

(2) a statement that the food is not inspected by the department or a local health department.

(c) For foods not required to be packaged under Subsection (a), the information required to be included on the label under Subsection (b) must be provided to the consumer on an invoice or receipt.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.

Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED. A cottage food production operation may not sell any of the foods described in Section 437.001(2-b)(A):

(1) through the Internet;

(2) by mail order; or

(3) at wholesale.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.

Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Subchapter D, Chapter 438.

(b) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(1) meets the requirements of Subsection (a);

(2) is directly supervised by an individual described by Subsection (a); or

(3) is a member of the household in which the cottage food products are produced.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 6, eff. September 1, 2013.

Sec. 437.0196. POTENTIALLY HAZARDOUS FOOD; PROHIBITION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) In this section, "potentially hazardous food" means a food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A potentially hazardous food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses potentially hazardous food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

(b) A cottage food production operation may not sell to customers potentially hazardous foods.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 6, eff. September 1, 2013.

Sec. 437.020. REGULATION OF FOOD SAMPLES AT FARMS AND FARMERS' MARKETS. (a) In this section:

(1) "Farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

(2) "Food" means an agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product for human consumption, in either its natural or processed state, that has been produced or processed or otherwise has had value added to the product in this state. The term includes:

- (A) fish or other aquatic species;
- (B) livestock, a livestock product, or a livestock by-product;
- (C) planting seed;
- (D) poultry, a poultry product, or a poultry by-product;
- (E) wildlife processed for food or by-products;
- (F) a product made from a product described by this subdivision by a farmer or other producer who grew or processed the product; or
- (G) produce.

(b) Except as provided by this section and Sections 437.0201, 437.0202, and 437.0203:

(1) this chapter does not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market; and

(2) a rule adopted under state law may not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market.

(c) Samples of food may be prepared and distributed at a farm or farmers' market if the following sanitary conditions exist:

- (1) samples must be distributed in a sanitary manner;
- (2) a person preparing produce samples on-site must:
  - (A) wear clean, disposable plastic gloves when preparing samples; or
  - (B) observe proper hand washing techniques immediately before preparing samples;
- (3) produce intended for sampling must be washed in potable water to remove any soil or other visible material;
- (4) potable water must be available for washing;
- (5) except as provided by Section 437.0202(b), potentially hazardous food, as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and
- (6) utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of.

(d) A person who sells or provides a sample of meat or poultry or food containing meat or poultry must comply with Chapter 433.

(e) This section does not authorize the sale of or provision of samples of raw milk or raw milk products at a farmers' market.



Added by Acts 2005, 79th Leg., Ch. 191 (H.B. 894), Sec. 1, eff. May 27, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 2, eff. September 1, 2013.

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The department or a local health department may issue a temporary food establishment permit to a person who sells food at a farmers' market without limiting the number of days for which the permit is effective to the number of days during which the farmers' market takes place.

(c) A permit issued under Subsection (b) may be valid for up to one year and may be renewed on expiration.

(d) This section does not apply to a farmers' market in a county:

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

(e) The executive commissioner or a state or local enforcement agency may not adopt a rule requiring a farmers' market to pay a permit fee for conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples is conducted for a bona fide educational purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 3, eff. September 1, 2013.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to

or from a farmers' market under Section 437.020, 437.0201, or 437.0203. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

(c) Except as provided by Subsection (d), the executive commissioner or a state or local enforcement agency may not mandate a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) The municipality in which a municipally owned farmers' market is located may adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

(e) This section does not apply to a farmers' market in a county:

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 4, eff. September 1, 2013.

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) Except as provided by this section and Sections 437.020, 437.0201, and 437.0202:

- (1) this chapter does not regulate cooking demonstrations at a farmers' market; and
- (2) a rule adopted under state law may not regulate cooking demonstrations at a farmers' market.

(c) A person may conduct a cooking demonstration at a farmers' market only if:

- (1) regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration:

- (A) has an establishment operator with a valid

certification under Subchapter D, Chapter 438, supervising the demonstration; and

(B) complies with Sections 437.020 and 437.0202, the requirements of a temporary food establishment under this chapter, and rules adopted under this chapter; and

(2) when the demonstrator provides a sample of food to consumers:

(A) the demonstrator provides a sample only and not a full serving; and

(B) samples of food prepared during a demonstration are disposed of not later than two hours after the beginning of the demonstration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 5, eff. September 1, 2013.

Sec. 437.021. AUTHORITY TO OPERATE ON CERTAIN PROPERTY. A person operating a mobile food unit, roadside food vendor, or temporary food service establishment in a county with a population of more than 3.3 million shall acquire written authorization from the owner of the property on which the unit, vendor, or establishment is operating. The written authorization must:

(1) be notarized;

(2) provide that the operator has the property owner's permission to operate the unit, vendor, or establishment on the property; and

(3) be prominently displayed in the unit, vendor, or establishment in plain view of the public at all times.

Added by Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 2, eff. June 15, 2007.

Sec. 437.023. SERVICE ANIMALS. (a) A food service establishment, retail food store, or other entity regulated under this chapter may not deny a service animal admittance into an area of the establishment or store or of the physical space occupied by the entity that is open to customers and is not used to prepare food if:

(1) the service animal is accompanied and controlled by a person with a disability; or

(2) the service animal is in training and is accompanied and controlled by an approved trainer.

(b) If a service animal is accompanied by a person whose disability is not readily apparent, for purposes of admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under this chapter, a staff member of the establishment, store, or entity may only inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work the service animal is trained to perform.

(c) In this section, "service animal" means a canine that is specially trained or equipped to help a person with a disability. An animal that provides only comfort or emotional support to a person is not a service animal under this section. The tasks that a service animal may perform in order to help a person with a disability must be directly related to the person's disability and may include:

(1) guiding a person who has a visual impairment;

(2) alerting a person who has a hearing impairment or who is deaf;

(3) pulling a wheelchair;

(4) alerting and protecting a person who has a seizure disorder;

(5) reminding a person who has a mental illness to take prescribed medication; and

(6) calming a person who has post-traumatic stress disorder.

Added by Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 1, eff. January 1, 2014.

## **CHAPTER 438. PUBLIC HEALTH MEASURES RELATING TO FOOD**

### **SUBCHAPTER A. UNPACKAGED FOODS**

Sec. 438.001. DEFINITIONS. In this subchapter:

(1) "Gravity feed type container" means a self-service container in which food is dispensed by operating a mechanism that permits the food to drop into a receptacle.

(2) "Scoop utensil type container" means a self-service container from which food is dispensed by using a utensil provided

with the container.

(3) "Unpackaged food" means food that is:

- (A) not in individual packaging or wrapping;
- (B) offered for sale by a retail food store; and
- (C) sold in bulk from a container that permits a

customer to dispense the food directly into a receptacle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.002. EXEMPTIONS. This subchapter does not apply to:

- (1) a beverage;
- (2) fresh fruit or vegetables;
- (3) food that is intended to be shelled or cooked before

consumption; or

(4) food, such as milk products, eggs, meat, poultry, fish, or shellfish, that is capable of supporting rapid and progressive growth of infectious or toxic microorganisms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.003. SALE FROM SELF-SERVICE CONTAINERS. (a) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(1) the self-service container has a tight-fitting lid that is securely attached to the container; and

(2) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(b) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(c) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(d) The seller shall:

(1) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(2) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.004. STRICTER RULES. (a) The Texas Board of Health by rule may establish requirements stricter than the requirements prescribed by Section 438.003 for the display and sale of unpackaged foods if the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged food authorized by this subchapter.

(b) The stricter requirement must be:

(1) adopted according to laboratory evidence supporting the specific relationship between the disease infestation or contamination and the method of dispensing the unpackaged food; and

(2) applied uniformly to all nonexempted food sources and dispensing methods.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.005. SALE OF UNPACKAGED FOOD; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally sells unpackaged food in a manner that does not comply with Section 438.003 or a rule adopted under Section 438.004.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.006. EFFECT ON OTHER LAWS. (a) This subchapter supersedes an ordinance or rule adopted by a political subdivision to regulate the method of dispensing unpackaged food.

(b) This subchapter does not affect an ordinance or rule adopted and enforced by a political subdivision to require the maintenance of sanitary conditions in the sale of unpackaged food dispensed in a manner authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. CLEANING AND STERILIZATION OF FOOD SERVICE ITEMS**

Sec. 438.011. DEFINITIONS. In this subchapter:

(1) "Dish" includes a vessel of any shape or size, made of any type of material, commonly used in eating or drinking.

(2) "Food factory" includes a place in which, as a business, food is manufactured or prepared for human consumption.

(3) "Receptacle" includes a vessel, tray, pot, pan, or other article used for holding food.

(4) "Utensil" includes a vessel or article of any shape or size, made of any material, commonly used in preparing, holding, storing, transporting, serving, or eating food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.012. USE OF UNCLEAN DISHES. A person who operates or manages a food factory may not use or keep for use a dish or utensil or a food-grinding machine or implement that after its previous use has not been cleaned in the manner required by Section 438.013(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.013. CLEANING DISHES, RECEPTACLES, AND UTENSILS. (a) A person who operates or manages a hotel, cafe, restaurant, dining car, drugstore, soda fountain, meat market, bakery, confectionery, liquor dispensary, or other establishment where food or drink is served to the public may not furnish to a person a dish, receptacle, or utensil that after its previous use has not been washed in warm water containing soap or alkali cleanser until the item is clean to the sight and touch.

(b) A dish or utensil that has been cleaned or polished with a poisonous substance may not be offered for use to a person or used in the manufacturing of food unless all traces of the poisonous substance have been removed from the dish or utensil.

(c) In this section, "liquor dispensary" means a place where beer, ale, wine, or any other alcoholic beverage is stored, prepared, labeled, bottled, served, or handled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.014. STERILIZATION OF FOOD SERVICE ITEMS. (a) After

cleaning dishes, receptacles, utensils, food-grinding machines, and implements as required by Section 438.012 or 438.013, the items shall be:

(1) placed in a wire cage and immersed in a still bath of clear water for at least:

(A) three minutes in water heated to a minimum temperature of 170 degrees Fahrenheit; or

(B) two minutes in water heated to a minimum temperature of 180 degrees Fahrenheit;

(2) immersed for at least two minutes in a lukewarm chlorine bath made up at a strength of 100 parts per milliliter or more of hypochlorites and not reduced to less than 50 parts per milliliter available chlorine, or a concentration of equal bacteriacidal strength if chloramines are used; or

(3) sterilized by any other chemical method approved by the Texas Board of Health.

(b) A three-compartment vat shall be used to sterilize dishes, receptacles, and utensils if a chlorine solution is used. The first compartment of the vat shall be used for washing, the second compartment for plain rinsing, and the third compartment for chlorine immersion. A satisfactory rinsing or spraying device may be substituted for the second rinsing compartment on an existing installation.

(c) The same chlorine solution may not be used as bacteriacidal treatment for more than one day.

(d) After sterilization, all dishes, receptacles, and utensils shall be stored in a manner that protects the food service items from contaminants.

(e) Subsections (a)-(d) do not apply to an establishment that uses electrically operated dishwashing and glasswashing machines that clean and sterilize mechanically.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.015. USE OF DAMAGED DISHES, RECEPTACLES, OR UTENSILS. A public eating or drinking establishment or a person who operates or manages a food factory may not use or keep for use a dish, receptacle, or utensil that is made or damaged in a manner that makes cleaning or sterilizing the item impossible or doubtful.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.016. NAPKINS. A napkin, cloth, or other article used by a person shall be laundered or sterilized before it is furnished for use to another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.017. PROTECTION OF OTHER FOOD SERVICE ITEMS. (a) A paper receptacle, ice cream cone, or other single service utensil to be used for serving food or drink shall be kept in a sanitary manner, protected from dust, flies, and other contaminants.

(b) A napkin, straw, toothpick, or other article may not be offered for the use of a person unless the article has been securely protected from dust, dirt, insects, rodents, and, as necessary and by all reasonable means, other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.018. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this subchapter is punishable by a fine of not less than \$5 or more than \$100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **SUBCHAPTER C. FOOD SERVICE EMPLOYEES**

Sec. 438.031. DEFINITION. In this subchapter, "food" includes simple, mixed, or compounded articles used for food, drink, flavoring, confectionery, and condiment for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.032. INFECTED PERSONS; FOOD HANDLING PROHIBITED. (a) A person may not handle food, utensils, dishes, or serving implements that are for public sale or for the consumption or use by another if

the person:

(1) is infected with a disease that is transmissible through the handling of food;

(2) resides in a household in which there is a transmissible case of a communicable disease that may be food borne;

(3) is known to be a carrier of the organisms causing a communicable disease that may be food borne; or

(4) has a local infection that is commonly transmitted through the handling of food.

(b) A person, firm, corporation, or organization operating or managing a public eating place or vehicle or other place where food is manufactured, processed, prepared, dispensed, or handled in a manner or under circumstances that would permit the probable transmission of disease from a handler to a consumer may not employ a person described in Subsection (a) to handle the food, utensils, dishes, or serving implements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.033. PHYSICAL EXAMINATION; DOCTOR'S CERTIFICATE. (a) On the request of an employer, the Texas Board of Health or the board's representative, or the local health authority or the local health authority's representative, a person employed or seeking employment in an activity regulated under Section 438.032:

(1) shall be examined by a licensed physician; and

(2) must receive a certificate signed by the physician stating that the examination has been performed and that to the best of the physician's knowledge the person examined did not have on the date of the examination a transmissible condition of a communicable disease or a local infection commonly transmitted through the handling of food.

(b) The examination must be actual and thorough and conducted with practical scientific procedures to determine the existence of a communicable disease that may be transmitted through the handling of food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.034. EMPLOYEE CLEANLINESS. (a) A person handling

food or unsealed food containers shall:

- (1) maintain personal cleanliness;
- (2) wear clean outer garments;
- (3) keep the person's hands clean; and
- (4) wash the person's hands and exposed portions of the

person's arms with soap and water:

- (A) before starting work;
- (B) during work as often as necessary to avoid cross-contaminating food; and
- (C) to maintain cleanliness, after smoking, eating, and each visit to the toilet.

(b) A person handling food or unsealed food containers may not contact with bare hands exposed ready-to-eat food unless:

(1) documentation is maintained at the food service establishment listing the foods and food handling activities that involve bare-hand contact; and

(2) the food service establishment uses two or more of the following contamination control measures:

- (A) requiring employees to perform double hand washing;
- (B) requiring employees to use fingernail brushes while hand washing;
- (C) requiring employees to use a hand sanitizer after hand washing;
- (D) implementing an incentive program that encourages employees not to come to work when ill; and
- (E) any other contamination control measure approved by the regulatory authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1068, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. [3012](#)), Sec. 2, eff. September 1, 2009.

Sec. 438.035. USE OF UNLAUNDERED TOWELS. A person at a place where food for public consumption is handled or sold may not use a towel unless the towel has been thoroughly laundered after it has been previously used by another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.036. CRIMINAL PENALTY. (a) A person, firm, corporation, or organization commits an offense if the person, firm, corporation, or organization violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than \$10 or more than \$200.

(c) Each day of a violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.037. MUNICIPAL ORDINANCES. This subchapter does not affect the authority granted under Article XI, Section 5, of the Texas Constitution, Article 1175, Revised Statutes, Subchapter F of this chapter, and the applicable chapters of the Local Government Code to a Type A general-law municipality or a home-rule municipality to adopt an ordinance relating to this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. FOOD SERVICE PROGRAMS**

Sec. 438.041. DEFINITION. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Food handler" means a food service employee who works with unpackaged food, food equipment or utensils, or food-contact surfaces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. [552](#)), Sec. 1, eff. September 1, 2007.

Sec. 438.042. DUTIES OF BOARD. (a) The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry.

Text of (b) as added by Acts 1991, 72nd Leg., ch. 539, Sec. 15

(b) The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who have previously completed a program accredited in accordance with this subchapter or have been certified by a local health jurisdiction and have completed training and testing requirements substantially similar to those required by this subchapter for program accreditation. The requirements for accreditation in Section 438.043 need not be met by an education or training program for recertification.

Text of (b) as added by Acts 1991, 72nd Leg., ch. 885, Sec. 1

(b) The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who:

(1) have previously completed a program accredited under this subchapter; or

(2) have been certified by a local health jurisdiction and have completed training and testing requirements that are substantially similar to those required by this subchapter for program accreditation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 15, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 885, Sec. 1, eff. Aug. 26, 1991.

Sec. 438.043. REQUIREMENTS FOR ACCREDITATION. (a) The department may not accredit an education or training program unless the program includes:

(1) four hours of training on the subject of food, including:

(A) a description of food-borne disease and its cause and prevention; and

(B) protection of food in location, receipt, storage, preparation, service, and transportation;

(2) four hours of training on the subject of food service facilities, including:

(A) waste disposal and sanitary plumbing and water;

(B) cleaning and sanitization of dishes and utensils;

- (C) storage of equipment and utensils;
  - (D) housekeeping procedures and schedules;
  - (E) proper handling of nonfood supplies, including single service items, linens, and toxic materials; and
  - (F) cleanliness of the physical plant, including building construction, ventilation, lighting, pest control, and general safety of the environment;
- (3) two hours of training on the subject of sanitary habits for food handlers, including:
- (A) personal hygiene, including proper dress, handwashing, personal habits, and illness;
  - (B) food handling practices, including minimum handling and proper use of food service utensils; and
  - (C) operational problems, including identification and correction of commonly occurring deficiencies; and
- (4) four hours of training on the subject of management in the food service industry, including:
- (A) self-inspection promotion and techniques;
  - (B) motivation, including safety, the economics of safe food handling, and planning to meet sanitation guidelines; and
  - (C) personnel training, including management responsibility, resources, and methods.

(b) In addition to the course requirements in Subsection (a), the department shall require that, to receive accreditation, a course include an examination of at least one hour to allow the instructor to evaluate the students' comprehension of the subject matter covered.

(c) The department shall ensure that each accredited program may be presented in not less than 15 hours.

(d) The course requirements in Subsection (a) do not apply to an education or training program for recertification.

(e) The department may modify the requirements of Subsection (a), (b), or (c) for a course used in training employees under the common control of a single entity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 885, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 1, eff. Aug. 28, 1995.

Sec. 438.0431. BASIC FOOD SAFETY ACCREDITATION. (a) Notwithstanding Section 438.043, the department may accredit an education or training program for basic food safety for food handlers as provided by this section.

(b) The executive commissioner of the Health and Human Services Commission shall by rule define the basic food safety training or education required to be included in a course curriculum. The course length may not exceed two hours.

(c) A training or education program accredited under this section may require a participant to achieve a passing score on an examination to successfully complete the course for certification.

(d) A program accredited under this section may be delivered through the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. 552), Sec. 2, eff. September 1, 2007.

Sec. 438.044. APPLICATION FOR ACCREDITATION. (a) A person seeking accreditation for an education or training program must apply to the department for accreditation. The applicant must demonstrate to the department the contents of the course.

(b) The department shall accredit a course that meets the minimum requirements of this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.045. AUDIT OF EDUCATION AND TRAINING PROGRAMS. The department shall conduct a regular audit of each program accredited under this subchapter to ensure compliance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.046. LIST OF ACCREDITED PROGRAMS. (a) The department shall maintain a registry of course programs accredited under this subchapter.

(b) A local health jurisdiction that requires training for a food service worker shall accept as sufficient to meet the jurisdiction's training and testing requirements a training course

that is accredited by the department and listed with the registry. A food service worker trained in a course for the employees of a single entity is considered to have met a local health jurisdiction's training and testing requirements only as to food service performed for that entity.

(c) Any fee charged by a local health jurisdiction for a certificate issued to a food service worker trained by an accredited course listed in the registry may not exceed the lesser of:

(1) the reasonable cost incurred by the jurisdiction in issuing the certificate; or

(2) the fee charged by the jurisdiction to issue a certificate to a food service worker certified by the jurisdiction as having met the training and testing requirements by any other means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 16, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 2, eff. Aug. 28, 1995.

Sec. 438.047. FEES. The department shall charge an application fee and an audit fee sufficient to cover the entire cost of accreditation, audit, and maintenance of the registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER F. FOOD INSPECTIONS**

Sec. 438.061. FOOD INSPECTIONS BY TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may regulate the inspection of beef, pork, flour, meal, salt, and other provisions.

(b) The governing body of a Type A general-law municipality may appoint weighers, gaugers, and inspectors, and may prescribe their duties and regulate their fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER G. CERTIFICATION OF FOOD MANAGERS**

Sec. 438.101. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Health.



(2) "Food establishment" means a fixed or mobile location retail establishment in which food is prepared on-site for sale to the public.

(3) "Food manager" means an individual who conducts, manages, or operates a food establishment.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.102. CERTIFICATION PROGRAM. (a) The board shall establish a certification program for food managers in accordance with this subchapter.

(b) The board by rule shall prescribe the requirements for issuance and renewal of a food manager certificate under this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.103. CERTIFICATION AND RENEWAL OF CERTIFICATION; EXAMINATION REQUIRED. A person who satisfies the requirements of this subchapter may receive and renew a food manager certificate by passing a state-approved examination.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF EXAMINATION SITES. (a) The board shall adopt criteria to approve examinations.

(b) In administering this subchapter, the board shall consider the impact of the traveling distance and time required for a food manager to obtain certification. The board shall give particular consideration to mitigating the impact of this subchapter on food managers in rural areas. The board shall use the Internet to implement the certification and may develop a system to permit administration of the examination using the Internet.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.105. CERTIFICATE AS EVIDENCE OF COMPLIANCE WITH OTHER LAW. A food manager certificate, including a renewal certificate, obtained under this subchapter shall be accepted as meeting the training and testing requirements under Section 438.046(b).

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.106. POWERS AND DUTIES OF BOARD; FEES. (a) The board by rule may adopt a fee for issuance or renewal of a food manager certificate under this subchapter in amounts reasonable and necessary to administer this subchapter, but not to exceed \$35.

(b) The board by rule may adopt a fee, in an amount not to exceed \$10, for an examination administered by the department under this subchapter.

(c) The board may adopt rules for the denial, suspension, and revocation of a food manager certificate issued under this subchapter.

(d) The board by rule may prescribe standards for:

- (1) examination sites;
- (2) expenses of administration of examinations under this subchapter; and
- (3) site audits for administration of this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

#### **SUBCHAPTER H. INFORMATION ON DEPARTMENT FOOD REGULATION**

Sec. 438.151. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.152. REQUEST FOR INFORMATION. Unless otherwise prohibited by state or federal law, on receipt of a written request for information pertaining to the regulation of food under this

subtitle, the department shall provide a reasonable and substantial response to the request not later than the 30th day after the date the department receives the request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.153. REQUEST FOR OFFICIAL DETERMINATION. (a) On receipt of a written request regarding the applicability to a specific circumstance of a regulation or the requirements for compliance with the regulation, the department shall provide an official written determination regarding the applicability of the regulation or the requirements for compliance with the regulation to the requestor not later than the 30th day after the date the department receives the request.

(b) An official determination made under this section is valid until the regulation that is the subject of the determination is amended by statute or department rule.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.154. EFFECT OF OFFICIAL DETERMINATION. An inspector may not issue to a person a citation for a violation of a food regulation governed by this subtitle if the person provides the inspector with an official determination made under Section 438.153 that contradicts the opinion of the inspector.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.155. RULES. (a) The executive commissioner shall adopt rules to implement this subchapter.

(b) The executive commissioner periodically shall evaluate the department's food safety rules and modify the rules as necessary to improve consistency and communication in food regulation in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

**CHAPTER 439. MANUFACTURE AND DISTRIBUTION OF CERTAIN DRUGS**  
**SUBCHAPTER A. LAETRILE**

Sec. 439.001. DEFINITION. In this chapter, "laetrile" means amygdalin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.002. MANUFACTURE AND SALE. Laetrile may be manufactured in this state in accordance with Chapter 431 (Texas Food, Drug and Cosmetic Act) and may be sold in this state for distribution by licensed physicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.003. PRESCRIPTION AND ADMINISTRATION. (a) A licensed physician may prescribe or administer laetrile in the treatment of cancer.

(b) A physician is not subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering laetrile to a patient under the physician's care who has requested the substance unless that board makes a formal finding that the substance is harmful.

(c) A finding under Subsection (b) must be made in a hearing conducted as provided by Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 439.004. REGULATION BY HEALTH CARE FACILITY. (a) A hospital or other health care facility may not forbid or restrict the use of laetrile when it is requested by a patient and prescribed or administered by a physician unless the Texas Board of Health finds that the substance is harmful as prescribed or administered by the physician.

(b) A finding under Subsection (a) must be made after a hearing conducted as provided by Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 439.005. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of laetrile. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving laetrile, and the reason for the disposal of laetrile to that person.

(b) The Texas State Board of Medical Examiners may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of laetrile;

(2) prescribes or dispenses laetrile to a person known to be a habitual user of narcotic or dangerous drugs or to a person who the physician should have known was a habitual user of narcotic or dangerous drugs;

(3) uses any advertising that tends to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients because of any mental or physical condition, including age, illness, or drunkenness, or because of excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) Subsection (b)(2) does not apply to a person being treated by the physician for narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of the patient being treated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. DIMETHYL SULFOXIDE**

Sec. 439.011. DEFINITION. In this subchapter, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.012. MANUFACTURE AND SALE. DMSO may be manufactured in this state and may be sold in this state for human use when prescribed or administered by a licensed physician or dispensed by a licensed pharmacist as prescribed by a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.013. PRESCRIPTION, ADMINISTRATION, AND DISPENSATION.

(a) Except as prohibited by Subsection (b), a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

(1) provides a written statement to the patient informing the patient that DMSO, in the formulation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and

(2) informs the patient of the alternative methods of treatment for the patient's disorder and the potential of alternative methods for cure.

(c) A licensed pharmacist may dispense DMSO on the written prescription of a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.014. REGULATION BY HEALTH CARE FACILITY. (a) A hospital or health care facility may not forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or facility unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) A hospital or health care facility that forbids or restricts the use of DMSO under Subsection (a)(2) shall conduct a hearing on the restriction or prohibition as soon as practicable

after its determination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.015. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of DMSO. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving DMSO, and the reason for the disposal of DMSO to that person.

(b) The Texas State Board of Medical Examiners may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of DMSO in a formulation not approved for human use; or

(2) prescribes or administers DMSO in a manner that has been proven, in a formal hearing held by the board, to be harmful to the patient.

(c) The Texas State Board of Medical Examiners may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public. The board must conduct a hearing on the temporary suspension as soon as practicable after the suspension.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.016. MISREPRESENTATION; CRIMINAL PENALTY. (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally represents DMSO as a cure for any human disease, ailment, or disorder.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.017. RESTRICTIONS ON MANUFACTURE, DISTRIBUTION, AND SALE; CRIMINAL PENALTY. (a) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide

formulation that is not sterile and pyrogen-free unless the substance is packaged in a container with a label that includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement: "Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics, and other materials."

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. PRESERVATION AND DISTRIBUTION OF CERTAIN UNUSED DRUGS**

Sec. 439.021. SHIPMENT TO FOREIGN COUNTRIES. (a) A consulting pharmacist of a nursing home may select, from a supply of drugs due for destruction, certain drugs to be used for shipment to a foreign country as provided by this subchapter.

(b) The supply of drugs due for destruction are those drugs accumulated because of the death of a resident of the nursing home or because a physician has ordered the use of the drug to be discontinued.

(c) Quarterly, before the drugs are destroyed, the consulting pharmacist may, in the pharmacist's professional judgment, select the drugs to be used under this subchapter and seal them in a box for shipment.

(d) The consulting pharmacist shall account to the Texas Department of Health for all drugs selected for shipment under this subchapter.

(e) This subchapter does not apply if the unused drug is a controlled substance as defined by Chapter 481 (Texas Controlled Substances Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.022. ADMINISTRATION. (a) The Texas Board of Health shall adopt rules consistent with federal and state law to implement this subchapter, including rules relating to:



- (1) the packaging and inventory of drugs for shipment;
- (2) the manner of shipment of the drugs from original shipment under this subchapter until the final destination; and
- (3) safeguards to ensure the proper handling of and accounting for all drugs shipped.

(b) The Texas Board of Health by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.023. CONTRACTS; FUNDS. (a) The Texas Department of Health may contract with other entities, including local governments and civic organizations, to implement this subchapter.

(b) The department may accept gifts, grants, and any other funds to implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 440.001. SHORT TITLE. This chapter may be cited as the Frozen Desserts Manufacturer Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.002. PURPOSE. The legislature finds that a statewide licensing act is needed to:

- (1) regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;
- (2) provide for uniformity of inspections of the premises of frozen dessert manufacturers;
- (3) protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts,

imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and

(4) assist manufacturers in meeting state standards or related requirements.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.003. DEFINITIONS. In this Act:

(1) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains an unwholesome substance or, if defined in this standard, that does not conform with its definition or that does not comply with Chapter 431 (Texas Food, Drug, and Cosmetic Act) or any other applicable regulation.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Department" means the Texas Department of Health.

(5) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(6) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix (regardless of whether it is dairy, nondairy, imitation, pasteurized or unpasteurized), frozen desserts, imitation frozen desserts, or nondairy frozen desserts for distribution or sale at wholesale. The term does not include a frozen desserts retail establishment.

(7) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(8) "Frozen desserts retail establishment" means premises, including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution.

(9) "Health authority" means the municipal, county, or state health officer or the officer's representative or any other

agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

(10) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

(11) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. The term does not include a retailer purchasing those products from a manufacturer displaying the retailer's brand name.

(12) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(13) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(14) "Sale" means the:

(A) manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale;

(B) sale, dispensing, or giving of any frozen dessert product; or

(C) supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(15) "State health officer" means the commissioner of health.

(16) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

- (1) a person operating a frozen desserts retail establishment; or
- (2) a person operating a retail store unless the person is also a manufacturer.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.005. HEARINGS. (a) A hearing conducted by the board in the administration of this chapter is governed by Chapter 2001, Government Code.

(b) Based on the record of a hearing conducted under this chapter, the department shall make a finding and shall sustain, change, or rescind an official notice or order considered in the hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 440.006. POWERS AND DUTIES OF BOARD. The board may:

- (1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:
  - (A) health, cleanliness, education, and training of personnel who are employed in the establishments;
  - (B) protection of raw materials, manufactured merchandise, and merchandise held for sale;
  - (C) design, construction, installation, and cleanliness of equipment and utensils;
  - (D) sanitary facilities and controls of the establishments;
  - (E) establishment construction and maintenance, including vehicles;

- (F) production processes and controls; and
  - (G) institution and content of a system of records to be maintained by the establishment; and
- (2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1), including procedures for the:
- (A) requirement of a valid license to operate an establishment;
  - (B) issuance, suspension, revocation, and reinstatement of licenses;
  - (C) administrative hearings before the board or its designee;
  - (D) institution of certain court proceedings by the board or its designee;
  - (E) inspection of establishments and securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;
  - (F) access to the establishments and to the vehicles used in operations;
  - (G) compliance by manufacturers outside the jurisdiction of the state; and
  - (H) review of plans for future construction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.007. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.009(c), Chapter 431 applies to a person or product regulated under this chapter, including a frozen dessert manufacturer, a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, and a mix for one of those products.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 3, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. LICENSING**

Sec. 440.011. PROHIBITED ACT. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless the person has a

valid license issued under this chapter.

(b) A political subdivision or agency of the state, other than the department, may not impose a license fee on any manufacturer covered by this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.012. LICENSE. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products may apply to the department for a license. A license shall be granted under the procedural rules adopted by the board and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 440.031 before issuing a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by the board under this chapter.

(d) A license issued under this chapter must be renewed on or before September 1 of each year in accordance with rules adopted by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.013. FEES. (a) A \$200 nonrefundable fee for each establishment must accompany each application for a license.

(b) The department also shall assess the following fees:

(1) a fee for a frozen dessert manufacturer located in this state in the amount of one cent per 100 pounds of manufactured or processed frozen dessert manufactured or processed and distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not located in this state in the amount of one cent per 100 pounds of frozen desserts manufactured or processed by the manufacturer in another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of frozen desserts for a frozen dessert manufacturer not located in this state.

(c) The board shall adopt rules to collect fees imposed under

this section monthly, quarterly, semiannually, or annually based on amounts due by the frozen dessert manufacturer.

(d) The department may revoke a license to operate a frozen desserts plant if the licensee fails to make a timely payment of the monthly fees required under this section. The department's rules of procedure for a contested case hearing and Chapter 2001, Government Code govern the revocation of a license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 440.014. RECORD KEEPING. The board shall adopt rules establishing minimum standards for record keeping by persons required to pay fees under this chapter and the records shall be made available to the department on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this chapter or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may accept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.016. TEMPORARY PERMIT. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. In accordance with rules adopted under Section 440.006, the commissioner may refuse an application for a license under this chapter or may suspend or revoke a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 4, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules adopted by the board, the department's authorized representatives have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed by the board under this chapter; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed by the board under this chapter.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) shall bear the cost of the samples and any analyses of the samples.

(c) The inspection procedures provided by this section are in addition to the procedures provided by Chapter 431.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 112, Sec. 5, eff. Sept. 1, 2003.



Sec. 440.032. PENALTIES. (a) A person commits an offense if the person knowingly or intentionally violates Section 440.011 or a rule adopted by the board under this chapter.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed under Chapter 431 or other law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 112, Sec. 6, eff. Sept. 1, 2003.

#### **CHAPTER 441. REGULATION OF BOTTLED AND VENDED DRINKING WATER**

Sec. 441.001. DEFINITION. In this chapter, "department" means the Texas Department of Health.

Added by Acts 1999, 76th Leg., ch. 879, Sec. 1, eff. Sept. 1, 1999.

Sec. 441.002. CERTIFICATION OF BOTTLED AND VENDED WATER OPERATORS. (a) A bottled or vended water operator may not furnish bottled or vended water to the public or for distribution to the public unless the bottled or vended water operator holds a certificate of competency under this chapter. A person may not furnish bottled or vended water to the public or for distribution to the public unless the processing, bottling, and distribution of the bottled or vended water are performed by or under the supervision of a bottled or vended water operator who holds a certificate of competency under this chapter.

(b) To obtain or renew a certificate an applicant must pay the department a \$25 fee.

(c) On receipt of the required fee, the department shall provide for the testing of the applicant and issue a certificate of competency to the applicant if the applicant passes the test.

Added by Acts 1999, 76th Leg., ch. 879, Sec. 1, eff. Sept. 1, 1999.

Sec. 441.003. RULES. The department may adopt rules that are necessary to implement this chapter that promote the public health and safety. The rules may include rules relating to certificate

suspension, revocation, or other disciplinary action and relating to certificate renewal.

Added by Acts 1999, 76th Leg., ch. 879, Sec. 1, eff. Sept. 1, 1999.

#### **SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS**

**According to Section 461.004, this chapter expired September 1, 2009. In 2003, the Texas Commission on Alcohol and Drug Abuse was abolished and the powers, duties, functions, programs, and activities of that agency were transferred to the Department of State Health Services by Section 1.19(a)(3), Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session.**

#### **CHAPTER 461. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE**

Sec. 461.001. POLICY. Chemical dependency is a preventable and treatable illness and public health problem affecting the general welfare and the economy of the state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that a chemically dependent person shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 168, eff. Sept. 1, 1991.

Sec. 461.002. DEFINITIONS. In this chapter:

- (1) "Chemical dependency" means:
  - (A) abuse of alcohol or a controlled substance;
  - (B) psychological or physical dependence on alcohol or a controlled substance; or
  - (C) addiction to alcohol or a controlled substance.
- (2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.
- (3) "Controlled substance" means a:
  - (A) toxic inhalant; or
  - (B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).
- (4) "Intervention" means the interruption of the onset or

progression of chemical dependency in the early stages.

(5) "Prevention" means the reduction of a person's risk of abusing alcohol or a controlled substance or becoming chemically dependent.

(6) "Rehabilitation" means the reestablishment of the social and vocational life of a person after treatment.

(7) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(8) "Treatment" means the initiation and promotion, in a planned, structured, and organized manner, of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(9) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the commission, or a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.11(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 169, eff. Sept. 1, 1991.

Sec. 461.003. COMPOSITION OF COMMISSION. (a) The purpose of this chapter is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcohol and Drug Abuse.

(b) The commission is composed of five members appointed by the governor with the advice and consent of the senate.

(c) Appointments to the commission shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointees.

(d) In appointing members to the commission under this section,

the governor shall appoint not fewer than three members with experience in business management, financial management, auditing, contract management, or similar activities that are relevant to the commission's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 876, Sec. 26.06, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1170, Sec. 1.01, eff. Sept. 1, 2003.

Sec. 461.004. APPLICATION OF SUNSET ACT. The Texas Commission on Alcohol and Drug Abuse is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.13, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 970, Sec. 1.01, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 2, eff. Sept. 1, 1997.

Sec. 461.005. RESTRICTIONS ON COMMISSION APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment or service as a commission member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of chemical dependency;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(b) An officer, employee, or paid consultant of an association that is primarily interested in the provision of services or in other matters relating to chemical dependency may not be a member or

employee of the commission.

(c) A person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of an association described by Subsection (b) may not be a commission member or a commission employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a provider of chemical dependency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 170, eff. Sept. 1, 1991.

Sec. 461.0051. COMMISSION MEMBER TRAINING. (a) To be eligible to take office as a member of the commission, a person appointed to the commission must complete at least one course of a training program that complies with Subsection (b).

(b) The training program required by Subsection (a) must provide information to the person regarding:

(1) the enabling legislation that created the commission and its policymaking body to which the member is appointed to serve;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code;

and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program required by Subsection (a) as provided by the General Appropriations Act and as if the person were a member of the commission.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.006. TERMS. Commission members serve staggered six-year terms, with the terms of one or two members expiring February 1 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 876, Sec. 26.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1170, Sec. 1.02, eff. Sept. 1, 2003.

Sec. 461.007. OFFICERS. (a) The governor shall annually appoint one commission member as chairman.

(b) The members of the commission shall annually elect one member as vice-chairman. The members may elect one member as secretary or designate the executive director of the commission as secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.008. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) is not eligible for appointment to the commission at the time of appointment as provided by Section 461.005(a);

(2) is not eligible to serve on the commission as provided by Section 461.005(a);

(3) violates a prohibition established by Section 461.005(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness

or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.009. PER DIEM; REIMBURSEMENT FOR EXPENSES. A commission member is entitled to receive:

(1) the compensatory per diem authorized by the General Appropriations Act for each day spent in performing the member's official duties; and

(2) reimbursement for travel expenses and other necessary expenses incurred in performing official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.010. MEETINGS; TRAVEL. (a) The commission shall meet at least quarterly at the call of the chairman or at the request of five members. The commission may not meet for more than 24 days in a fiscal year.

(b) The commission may authorize its members to travel in this state and in other states to perform commission duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.011. PERSONNEL. (a) The commissioner of health and human services shall employ an executive director in accordance with Section 531.0056, Government Code. The executive director shall hire

other necessary employees.

(b) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intra-agency posting of all positions concurrently with any public posting.

(c) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

(d) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission work force that meets federal and state laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission work force of all persons for whom federal or state laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) A policy statement prepared under Subsection (e) must:

(1) cover an annual period;

(2) be updated annually and reviewed by the Texas Commission on Human Rights for compliance with Subsection (e); and



(3) be filed with the governor's office.

(g) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

(h) The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.149, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1460, Sec. 2.19, eff. Sept. 1, 1999.

Sec. 461.0115. POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the commission and executive director as provided by Section 531.0055, Government Code. To the extent a power or duty given to the commission or executive director by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.20, eff. Sept. 1, 1999.

Sec. 461.012. POWERS AND DUTIES. (a) The commission shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system

authorities;

(D) educational and medical agencies and organizations;

and

(E) other related public and private groups and

persons;

(4) expand chemical dependency services for children when funds are available because of the long-term benefits of those services to the state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify chemically dependent persons and their families in need of service;

(7) require programs rendering services to chemically dependent persons to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the commission to carry out this chapter and maximize the overall state allotment of federal funds;

(13) develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction;

(14) establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to

establish or approve peer assistance programs for impaired professionals;

(15) adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs;

(16) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for youth at risk of selling controlled substances;

(17) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26); reports and strategies are to be coordinated with appropriate state governmental entities; and

(18) regulate, coordinate, and provide training for alcohol awareness courses required under Section 106.115, Alcoholic Beverage Code, and may charge a fee for an activity performed by the commission under this subdivision.

(b) The commission may establish regional alcohol advisory committees consistent with the regions established under Section 531.024, Government Code.

(c) The commission may appoint advisory committees to assist the commission in performing its duties. State advisory committee members are entitled to receive the per diem and travel expense allowance authorized by the General Appropriations Act for state employees.

(d) The commission shall comply with federal and state laws related to program and facility accessibility.

(e) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

(f) Subsection (a)(18) does not apply to a 12-step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 171, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 637, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 671, Sec. 4, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 577, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 825, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(68), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.133, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.04, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.02, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(d), eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Sec. 461.0121. EMERGENCY TREATMENT RESOURCES. The executive director may develop emergency treatment resources for persons who appear to be:

- (1) chemically dependent;
- (2) under the influence of alcohol or a controlled substance and in need of medical attention; or
- (3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 172, eff. Sept. 1, 1991.

Sec. 461.0122. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The executive director may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 172, eff. Sept. 1, 1991.

Sec. 461.0123. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM A FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

(2) record its determination in the case record of the child; and

(3) record the information for statistical reporting purposes.

(b) The agencies shall revise their assessment forms, as needed, to include a determination under this section.

(c) The commission shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

Added by Acts 1991, 72nd Leg., ch. 627, Sec. 4, eff. Sept. 1, 1991.

Sec. 461.0124. STATEWIDE SERVICE DELIVERY PLAN. (a) The commission shall develop and adopt a statewide service delivery plan. The commission shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the commission's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section 531.024, Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(6) a description of minimum service levels for each region;

(7) a mechanism for the commission to obtain and consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the commission's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention, intervention, treatment, rehabilitation, research, education, and training.

(b) The commission shall gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives.

(c) In developing the plan, the commission shall analyze the costs of implementation of proposed features of the plan by both the commission and service providers. The commission shall use the analysis to maximize the efficiency of service delivery under the final plan.

(d) The plan must provide a priority for obtaining treatment services for individuals in need of treatment who are parents of a child in foster care.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0125. CLIENT SERVICE CONTRACT STANDARDS. (a) In each contract for the purchase of chemical dependency program-related client services, the commission shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) Contract goals must include a standard developed by the

commission that is based on a percentage of program clients who maintain long-term recovery for an extended period as defined by the commission.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0126. CONTRACT MONITORING. The commission shall establish a formal program to monitor program-related client services contracts made by the commission. The commission must:

- (1) monitor compliance with financial and performance requirements using a risk assessment methodology; and
- (2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0127. TECHNICAL ASSISTANCE PROGRAM. The commission shall adopt technical assistance policies and procedures for a technical assistance program that:

- (1) is clearly separate from the commission's contract monitoring activities;
- (2) has a single office for technical assistance requests; and
- (3) includes explicit response time frames.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0128. STATE AGENCY SERVICES STANDARDS. (a) The commission by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The commission shall provide the model standards to each agency that provides substance abuse services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the commission shall review the model standards

developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 17, eff. Sept. 1, 1999.

Sec. 461.0129. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The commission may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted jointly with the Texas Board of Mental Health and Mental Retardation.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 18, eff. Sept. 1, 1999.

Sec. 461.013. EDUCATION AND RESEARCH PROGRAMS CONCERNING CONTROLLED SUBSTANCES. (a) In this section, "controlled substances" means those substances designated as controlled substances by Chapter 481 (Texas Controlled Substances Act).

(b) The commission, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with those programs the commission may:

- (1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) consult with interested groups and organizations to aid those groups in solving administrative and organizational problems;
- (4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of problems that exist and ways to combat those problems; and
- (6) assist in educating and training state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.



(c) The commission shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of Chapter 481 (Texas Controlled Substances Act), the executive director may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Chapter 481 (Texas Controlled Substances Act);

(B) determine patterns and social effects of misuse and abuse of controlled substances; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) contract with public agencies, institutions of higher education, and private organizations or individuals to conduct research, demonstrations, or special projects that bear directly on misuse and abuse of controlled substances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.0131. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS.

(a) The commission may fund community outreach programs that have direct contact with intravenous drug users.

(b) An outreach program funded by the commission must:

(1) provide education on HIV infection based on the model education program developed by the Texas Department of Health;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities; and

(4) encourage behavior consistent with state criminal laws.

(c) In this section, "HIV" means human immunodeficiency virus.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 173, eff. Sept. 1, 1991.

Sec. 461.0132. MINIMUM PROGRAM REQUIREMENTS. (a) A chemical dependency intensive intervention, outpatient, residential treatment,

or rehabilitation program that is provided by the commission or that is funded in whole or part by funds allocated through the commission must include:

- (1) coping skills training;
  - (2) education regarding the manifestations and dynamics of dysfunctional relationships within the family; and
  - (3) support group opportunities for children and adults.
- (b) This section does not apply to:
- (1) a detoxification program or that part of a program that provides detoxification; or
  - (2) a program provided by the Texas Youth Commission.
- (c) In this section, "coping skills training" means instruction in the elements and practice of and reasons for the skills of communication, stress management, problem solving, daily living, and decision making.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 173, eff. Sept. 1, 1991.

Sec. 461.0133. RELAPSE RATE REPORTING. (a) A treatment program provided or funded by the commission shall report to the commission on the effectiveness of the chemical dependency treatment program.

(b) The report must show to the extent possible, without violating the confidentiality of information received by the program, the rate of relapse of persons who have received treatment services.

(c) The commission by rule may provide for the content of a report and the procedure for reporting under this section. Reports must be uniform in classifications of persons receiving treatment according to the severity of addiction, substance abused, age of person treated, and modality of treatment. A report may not reveal the name of an individual subject to treatment or of a family member or acquaintance of an individual treated and may not describe circumstances from which any of those individuals may be identified.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 173, eff. Sept. 1, 1991.

Sec. 461.014. FINANCES. (a) The commission may accept gifts and grants.

(b) All money paid to the commission under this chapter is

subject to Subchapter F, Chapter 404, Government Code.

(c) The commission shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

(d) The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(e) The commission is the state agency to:

(1) receive and administer federal funds for alcohol and drug abuse, including applying for, administering, and disbursing funds under the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. Section 1101 et seq.); and

(2) prescribe all necessary policies relating to alcohol and drug abuse.

(f) An organization or other entity is not eligible for a grant of state funds from the commission unless the organization or entity provides matching funds in either cash or in-kind contributions equal to at least five percent of the total grant of state funds from the commission. The commission may waive that requirement if the commission determines that the requirement may jeopardize the provision of needed services.

(g) In allocating grant funds, the commission shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. An organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the commission.

(h) As a condition to receiving contract or grant funds under this chapter, a public or private organization or entity must provide to the commission information relating to:

(1) the number of chemically dependent persons the organization or entity served, if any, during the preceding year, the municipalities and counties of residence of those persons, and the number of persons served from each municipality and county; and

(2) the number of chemically dependent persons the organization or entity expects to serve during the term of the requested grant or contract, the expected municipalities and counties

of residence for those persons, and the expected number of persons served from each municipality and county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 174, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 788, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 577, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 591, Sec. 1, eff. Sept. 1, 2001.

Sec. 461.0141. SERVICES FUNDING. (a) The commission by rule shall adopt a system of funding the provision of chemical dependency services that includes competitive and noncompetitive procedures to:

- (1) maximize the range of treatment services available in each service region;
- (2) provide reasonable access in each region to available services; and
- (3) include local public participation in making regional funding decisions and formal funding recommendations.

(b) The system must require that the commission award each proposed chemical dependency services contract to the applicant that the commission determines has made the bid that provides the best value.

(c) In determining the best value bid for a contract under this section, the commission shall consider:

- (1) the quality of the proposed service;
- (2) cost;
- (3) the applicant's ability to:
  - (A) perform the contract;
  - (B) provide the required services; and
  - (C) provide continuity of service;
- (4) whether the applicant can perform the contract or provide the services within the period required, without delay or interference;
- (5) the applicant's history of:
  - (A) contract performance; and
  - (B) compliance with the laws relating to the applicant's business operations and the affected services;
- (6) whether the applicant's financial resources are sufficient to perform the contract and to provide the services;

- (7) whether necessary or desirable support and ancillary services are available to the applicant;
  - (8) the degree of community support for the applicant;
  - (9) the quality of the facilities and equipment available to or proposed by the applicant;
  - (10) the ability of the applicant to meet all applicable written commission policies, principles, and regulations;
  - (11) state investment in the applicant; and
  - (12) other factors the commission determines relevant.
- (d) Rules adopted under this section must set out the commission's provider selection processes, including:
- (1) service purchase methods;
  - (2) eligibility criteria;
  - (3) provider selections criteria; and
  - (4) selection determination procedures.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0142. FUNDING POLICY MANUAL. (a) The commission shall publish a funding policy manual that explains:

- (1) the commission's funding priorities and provider selection criteria; and
- (2) the methods the commission used to develop funding policies.

(b) The commission shall update the manual annually.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.0143. UNIT RATE REIMBURSEMENT. (a) The commission shall study the procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis.

(b) If the commission determines, after consideration of the study, that procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis in appropriate areas of the state would result in obtaining the highest quality treatment services at the best price and the lowest administrative cost to the commission, the commission shall adopt a unit rate reimbursement system for those services. The system must:

- (1) include competitive procurement;

- (2) monitor provider performance;
  - (3) monitor the reasonableness of provider costs and expenditures;
  - (4) verify provider costs before and after a contract term to ensure rates are set appropriately;
  - (5) ensure accountability of providers; and
  - (6) contain costs.
- (c) The commission may procure and pay for chemical dependency prevention and intervention services under a unit rate reimbursement system when the commission determines it is appropriate.
- (d) In this section, "unit rate reimbursement" means reimbursement for a service paid at a specified rate for a unit of the service provided to a client multiplied by the number of units provided.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 7, eff. Sept. 1, 1997.

Sec. 461.015. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification:

- (1) on each registration form, application, or written contract for services of a person or entity regulated or authorized by this chapter;
- (2) on a sign that is prominently displayed in the place of business of each person or entity regulated or authorized by this chapter; or
- (3) in a bill for service provided by a person or entity regulated or authorized by this chapter.

(c) The commission shall keep a file about each written complaint filed with the commission that the commission has authority to resolve. The commission shall provide to the person filing the

complaint and to the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the complainant and each person or entity complained about of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The commission shall keep information about each complaint filed with the commission. The information must include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;
- (6) an explanation of the reason the complaint was closed without action, for complaints on which the commission took no action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 577, Sec. 5, eff. Sept. 1, 1997.

Sec. 461.016. COOPERATION WITH COMMISSION. (a) Each department, agency, officer, and employee of the state, when requested by the commission, shall cooperate with the commission in appropriate activities to implement this chapter.

(b) This section does not give the commission control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the commission in a manner that is inconsistent with their functions, the authority of their offices, or the laws and rules governing their activities.

(c) This section does not authorize the commission to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 461.017. ADVISORY COMMITTEE ON REDUCING DRUG DEMAND. (a) The Drug Demand Reduction Advisory Committee is composed of the following members:

(1) five representatives of the public from different geographic regions of the state who have knowledge and expertise in issues relating to reducing drug demand and who are appointed by the commissioner of the Department of State Health Services; and

(2) one representative of each of the following agencies or offices who is appointed by the executive director or commissioner of the agency or office and who is directly involved in the agency's or office's policies, programs, or funding activities relating to reducing drug demand:

(A) the criminal justice division of the governor's office;

(B) the Criminal Justice Policy Council;

(C) the Department of Family and Protective Services;

(D) the Department of Public Safety of the State of Texas;

(E) the Health and Human Services Commission;

(F) the Texas Alcoholic Beverage Commission;

(G) the Department of State Health Services;

(H) the Texas Council on Offenders with Mental Impairments;

(I) the Texas Department of Criminal Justice;

(J) the Health and Human Services Commission;

(K) the Department of Aging and Disability Services;

(L) the Texas Education Agency;

(M) the Texas Juvenile Probation Commission;

(N) the Texas Youth Commission;

(O) the Department of Assistive and Rehabilitative Services;

(P) the Texas Workforce Commission;

(Q) the Texas Department of Motor Vehicles;

(R) the comptroller of public accounts; and

(S) the adjutant general's department.

(b) The representative of the Texas Commission on Alcohol and Drug Abuse shall serve as the presiding officer of the Drug Demand Reduction Advisory Committee. The commission may provide administrative support to the committee.

(c) The Drug Demand Reduction Advisory Committee shall meet at



least once in each quarter of each calendar year on dates determined by the committee.

(d) The Drug Demand Reduction Advisory Committee shall serve as a single source of information for the governor, the legislature, and the public about issues relating to reducing drug demand, including available prevention programs and services.

(e) The Drug Demand Reduction Advisory Committee shall develop a statewide strategy to reduce drug demand. The strategy must:

(1) incorporate multidisciplinary approaches using current empirical research;

(2) include performance-based measurement and accountability standards, short-term objectives, and ten-year targets for reducing drug demand;

(3) coordinate, to the extent possible, the efforts of private sector entities and local, state, and federal agencies, including the Office of National Drug Control Policy and the United States Drug Enforcement Administration, to reduce drug demand; and

(4) provide opportunities for representatives from the public and private sectors to comment on the committee's activities and make recommendations related to the strategy.

(f) The Drug Demand Reduction Advisory Committee shall identify lead or contributing agencies or offices that shall implement the strategy described in Subsection (e). The committee shall coordinate the implementation of the strategy by those agencies or offices.

(g) The Drug Demand Reduction Advisory Committee may establish additional advisory committees composed of representatives from governmental entities and the private sector to assist the committee in carrying out its duties.

(h) Not later than January 15 of each odd-numbered year, the Drug Demand Reduction Advisory Committee shall present to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the committee's progress in developing and coordinating the strategy described in Subsection (e);

(2) the status and funding of state programs relating to reducing drug demand; and

(3) recommendations for legislation to address issues involved in reducing drug demand.

Added by Acts 2001, 77th Leg., ch. 239, Sec. 1, eff. May 22, 2001.

Amended by Acts 2003, 78th Leg., ch. 862, Sec. 1, eff. June 20, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.03, eff. September 1, 2009.

Sec. 461.018. COMPULSIVE GAMBLING PROGRAM. (a) The commission shall establish a program for:

- (1) public education, research, and training regarding problem or compulsive gambling; and
- (2) the treatment and prevention of problem or compulsive gambling.

(b) The commission's program under Subsection (a) must include:

- (1) establishing and maintaining a list of webpages and toll-free "800" telephone numbers of nonprofit entities that provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling;
- (2) promoting public awareness regarding the recognition and prevention of problem or compulsive gambling;
- (3) facilitating, through in-service training and other means, the availability of effective assistance programs for problem or compulsive gamblers; and
- (4) conducting studies to identify adults and juveniles in this state who are, or who are at risk of becoming, problem or compulsive gamblers.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 11. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.72(a), eff. Sept. 1, 2003.

## **CHAPTER 462. TREATMENT OF CHEMICALLY DEPENDENT PERSONS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 462.001. DEFINITIONS. In this chapter:

- (1) "Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a chemically dependent person.
- (2) "Certificate" means a sworn certificate of medical examination for chemical dependency executed under this chapter.
- (3) "Chemical dependency" means:
  - (A) the abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(4) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(5) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(6) "Legal holiday" means a state holiday listed in Section 662.021, Government Code, or an officially declared county holiday applicable to a court in which proceedings under this chapter are held.

(7) "Proposed patient" means a person named in an application for emergency detention, protective custody, or commitment under this chapter.

(8) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(9) "Treatment" means the initiation and promotion of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(10) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the commission, a facility licensed by the Texas Department of Mental Health and Mental Retardation, or a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 1, eff. June 15, 1993;

Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995.

Sec. 462.002. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a court having original jurisdiction under this chapter must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

- (1) the date on which the paper is filed;
- (2) the docket number; and
- (3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this chapter would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this chapter requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.03, eff. Aug. 30, 1993.

Sec. 462.0025. COURT HOURS. (a) The probate court or court having probate jurisdiction shall be open for proceedings under this chapter during normal business hours.

(b) The probate judge or magistrate shall be available at all times at the request of a person taken into custody or detained under Subchapter C or a proposed patient under Subchapter D.

Amended by Acts 1991, 72nd Leg., ch. 567, Sec. 9, eff. Sept. 1, 1991.  
Amended by:

Acts 2005, 79th Leg., Ch. 14 (S.B. 348), Sec. 1, eff. May 3, 2005.

Sec. 462.003. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for commitment proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the:

- (1) county judge;
- (2) judge of a court that has probate jurisdiction; or
- (3) judge of a district court having jurisdiction in the

county.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this chapter.

(e) This section does not affect access of law enforcement personnel to necessary information in the execution of a writ or

warrant.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.004. REPRESENTATION OF STATE. In a hearing on court-ordered treatment held under this chapter:

- (1) the county attorney shall represent the state; or
- (2) if the county has no county attorney, the district attorney shall represent the state.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.005. COSTS. (a) The laws relating to the payment of the costs of commitment, support, maintenance, and treatment and to the securing of reimbursement for the actual costs applicable to court-ordered mental health, probation, or parole services apply to each item of expense incurred by the state or the county in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this chapter.

(b) A county that enters an order of commitment or detention under this chapter is liable for payment of the costs of any proceedings related to that order, including:

- (1) court-appointed attorney fees;
- (2) physician examination fees;
- (3) compensation for language or sign interpreters;
- (4) compensation for masters; and
- (5) expenses to transport a patient to a hearing or to a treatment facility.

(c) A county or the state is entitled to reimbursement from any of the following persons for costs actually paid by the county or state and that relate to an order of commitment or detention:

- (1) the patient;
- (2) the applicant; or
- (3) a person or estate liable for the patient's support in a treatment facility.

(d) On a motion of the county or district attorney or on the

court's own motion, the court may require an applicant to file a cost bond with the court.

(e) The state shall pay the costs of transporting a discharged patient to the patient's home or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(f) The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the commission or the commissioners court of the county, as appropriate.

(g) Notwithstanding Subsection (c), a person who files an application for the commitment of another while acting in the person's capacity as an employee of a local mental health authority is not liable for the payment of any costs under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 10, eff. Sept. 1, 1991.

Sec. 462.006. WRIT OF HABEAS CORPUS. This chapter does not limit a person's right to obtain a writ of habeas corpus.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.007. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, commitment, treatment, or discharge of a proposed patient or in the performance of any act required or authorized by this chapter and who acts in good faith, reasonably, and without malice or negligence is not civilly or criminally liable for that action.

(b) A physician performing a medical examination or providing information to a court in a court proceeding under this chapter or providing information to a peace officer to demonstrate the necessity to apprehend a person under Section 462.041 is considered an officer of the court and is not civilly or criminally liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for release is notified that the person assumes all responsibility for the patient on discharge.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 11, eff. Sept. 1, 1991.

Sec. 462.008. CRIMINAL PENALTY; ENFORCEMENT. (a) A person commits an offense if the person intentionally causes, conspires with another person to cause, or assists another to cause the unwarranted commitment of a person to a treatment facility.

(b) A person commits an offense if the person knowingly violates this chapter.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than \$50 or more than \$25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than \$500 or more than \$100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$100 or more than \$50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than \$1,000 or more than \$200,000 for each violation and each day of a continuing violation.



(g) The appropriate district or county attorney shall prosecute violations of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.05, eff. Sept. 1, 1993.

Sec. 462.009. CONSENT TO TREATMENT. (a) A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:

(1) the patient is younger than 18 years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication, therapy, or treatment on behalf of the patient;

(2) the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or

(3) a physician treating the patient determines that the medication is necessary to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.

(b) The decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) must be based on knowledge of what the patient would desire, if known.

(c) A patient's refusal to receive medication, therapy, or treatment under Subsection (a), or a patient's attempt to refuse if the patient's right to refuse is limited by that subsection, shall be documented in the patient's clinical record together with the patient's expressed reason for refusal.

(d) If a physician orders a medication to be administered to a patient under Subsection (a)(3), the physician shall document in the patient's clinical record in specific medical and behavioral terms the reasons for the physician's determination of the necessity of the

order.

(e) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment is valid only if:

(1) for consent to therapy or treatment:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) before administration of the therapy or treatment, the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor explains to the patient and to the person giving consent, in simple, nontechnical language:

(i) the specific condition to be treated;

(ii) the beneficial effects on that condition expected from the therapy or treatment;

(iii) the probable health and mental health consequences of not consenting to the therapy or treatment;

(iv) the side effects and risks associated with the therapy or treatment;

(v) the generally accepted alternatives to the therapy or treatment, if any, and whether an alternative might be appropriate for the patient; and

(vi) the proposed course of the therapy or treatment;

(2) for consent to the administration of medication:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) the treating physician provides each explanation required by Subdivision (1)(B) to the patient and to the person giving consent in simple, nontechnical language; and

(3) for consent to medication, therapy, or treatment, the informed consent is evidenced in the patient's clinical record by a signed form prescribed by the commission for this purpose or by a statement of the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor who obtained the consent that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(f) A person who consents to the administration of a

medication, therapy, or treatment may revoke the consent at any time and for any reason, regardless of the person's capacity. Revocation of consent is effective immediately and further medication, therapy, or treatment may not be administered unless new consent is obtained in accordance with this section.

(g) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf applies to a series of doses of medication or to multiple therapies or treatments for which consent was previously granted. If the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor obtains new information relating to a therapy or treatment for which consent was previously obtained, the physician or the psychologist, social worker, professional counselor, or chemical dependency counselor must explain the new information and obtain new consent. If the treating physician obtains new information relating to a medication for which consent was previously obtained, the physician must explain the new information and obtain new consent.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.14, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1216, Sec. 2, eff. June 15, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. [3146](#)), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION**

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services;

(B) a facility licensed by the Texas Department of Mental Health and Mental Retardation; or

(C) a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment; and

(2) the admission is appropriate under the facility's admission policies.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 2, eff. June 15, 1993.

Sec. 462.022. VOLUNTARY ADMISSION OF MINOR. (a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services to minors;

(B) a facility licensed by the Texas Department of Mental Health and Mental Retardation; or

(C) a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian of the minor; or

(B) the minor, without parental consent, if the minor is 16 years of age or older.

(b) The admission of a minor under Subsection (a) is considered a voluntary admission.

(c) A person or agency appointed as the guardian or a managing conservator of a minor and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d) In this section, "minor" means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 573, Sec. 3.03(a), eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 671, Sec. 3, eff. June 15, 1993; Acts 2001, 77th Leg., ch. 1216, Sec. 3, eff. June 15, 2001.

Sec. 462.023. DISCHARGE OR RELEASE. (a) Except as provided by Subsection (b), a facility shall release a voluntary patient within a reasonable time, not to exceed 96 hours, after the patient requests

in writing to be released.

(b) A facility is not required to release the patient if before the end of the 96-hour period:

(1) the patient files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3) the patient is a minor under the age of 16 admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the patient.

(c) Subsection (a) applies to a minor admitted under Section 462.022 if the request for release is made in writing to the facility by the person who requested the initial admission.

(d) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which the person may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 13, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1216, Sec. 4, eff. June 15, 2001.

Sec. 462.0235. DISCHARGE OR RELEASE OF MINOR 16 OR 17 YEARS OF AGE. (a) Except as provided by this section, a facility shall release a minor who is 16 or 17 years of age within a reasonable time, not to exceed 96 hours, after:

(1) the minor requests in writing to be released; or

(2) for a minor admitted under Section 462.022(a)(3)(A), the minor's parent, managing conservator, or guardian requests the release in writing.

(b) A facility is not required to release a minor who is 16 or 17 years of age within the period described by Subsection (a) if:

(1) the request is filed with the facility by the minor

before the 15th day after the date of the minor's admission to the facility; or

(2) the request is filed with the facility by the minor on or after the 15th day after the minor's date of admission to the facility and, not later than 96 hours after the request is filed:

(A) the minor files with the facility a written withdrawal of the minor's request; or

(B) an examining physician places in the minor's medical record a certificate of medical examination described by Subsection (c).

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined minor's physical and mental condition;

(5) the period, if any, during which the examined minor has been under the care of the examining physician;

(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined minor is chemically dependent;

(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and

(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm to the minor or others or:

(i) would suffer severe and abnormal mental, emotional, or physical distress;

(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and

(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

(d) A facility shall release a minor whose release was postponed under Subsection (b)(2)(B) on the 15th day after the date

of the most recent examination for which a certificate described by Subsection (c) is performed unless the physician conducts an additional examination of the minor and places another certificate of examination described by Subsection (c) in the minor's medical record.

(e) If a minor who is 16 or 17 years of age requests to be released from a facility on or after the 60th day after the date of the minor's admission to the facility, the facility shall release the minor within a reasonable time, not to exceed 96 hours, unless:

- (1) an application for court-ordered treatment of the minor or for emergency detention of the minor is filed; and
- (2) the minor is detained in accordance with this chapter.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which a minor may be detained under this section. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the minor may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 2001, 77th Leg., ch. 1216, Sec. 5, eff. June 15, 2001.

Sec. 462.024. APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE. (a) An application for court-ordered treatment may not be filed against a patient receiving voluntary care under this subchapter unless:

- (1) a request for release of the patient has been filed;
- or
- (2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered treatment and:
    - (A) is absent from the facility without authorization;
    - (B) is unable to consent to appropriate and necessary treatment; or
    - (C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's

treatment and that physician completes a certificate of medical examination for chemical dependency that, in addition to the information required by Section 462.064, includes the opinion of the physician that:

- (i) there is no reasonable alternative to the treatment recommended by the physician; and
- (ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 903, Sec. 1.15, eff. Aug. 30, 1993.

Sec. 462.025. INTAKE, SCREENING, ASSESSMENT, AND ADMISSION.

(a) The commission shall adopt rules governing the voluntary admission of a patient to a treatment facility, including rules governing the intake, screening, and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

- (1) reviewing a prospective patient's finances and insurance benefits;
- (2) explaining to a prospective patient the patient's rights; and
- (3) explaining to a prospective patient the facility's services and treatment process.

(b-1) The rules governing the screening process shall establish minimum standards for determining whether a prospective patient presents sufficient signs, symptoms, or behaviors indicating a potential chemical dependency disorder to warrant a more in-depth assessment by a qualified professional. The screening must be reviewed and approved by a qualified professional.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by commission rules.

(d) The rules governing the assessment process shall prescribe:

- (1) the types of professionals who may conduct an



assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with commission rule, a treatment facility shall provide annually a minimum of two hours of inservice training regarding intake and screening for persons who will be conducting an intake or screening for the facility. A person may not conduct intake or screenings without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for chemical dependency treatment in a treatment facility unless the facility's administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a qualified professional before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a treatment facility.

(2) "Assessment" means the clinical process a treatment facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be admitted.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the treatment facility and the facility's treatment and services.

(4) "Screening" means the process a treatment facility uses to determine whether a prospective patient presents sufficient signs, symptoms, or behaviors to warrant a more in-depth assessment by a qualified professional.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.08, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. [3146](#)), Sec. 2, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 4, eff. September 1, 2011.

#### **SUBCHAPTER C. EMERGENCY DETENTION**

Sec. 462.041. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is chemically dependent; and

(B) because of that chemical dependency there is a substantial risk of harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental or physical condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient treatment facility;

or

(2) if an appropriate inpatient treatment facility is not available, a facility considered suitable by the county's health authority.

(e) A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(f) A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain:

- (1) a statement that the officer has reason to believe and does believe that the person evidences chemical dependency;
- (2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;
- (3) a specific description of the risk of harm;
- (4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
- (5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;
- (6) a detailed description of the specific behavior, acts, attempts, or threats; and
- (7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(g) The person shall be released on completion of a preliminary examination conducted under Section 462.044 unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 462.044(b). If a person is not admitted to a facility, is not arrested, and does not object, arrangements shall be made to immediately return the person to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(h) The county in which the person was apprehended shall pay the costs of the person's return.

(i) A treatment facility may provide to a person medical assistance regardless of whether the facility admits the person or refers the person to another facility.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.042. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY

DETENTION. (a) An adult may file a written application for emergency detention of a minor or another adult.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person who is the subject of the application is a chemically dependent person;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the relationship, if any, of the applicant to the person.

(c) The application may be accompanied by any relevant information.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.043. ISSUANCE OF WARRANT. (a) An applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (f), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1) the person who is the subject of the application is a

chemically dependent person;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) The judge or magistrate shall issue a warrant for the person's immediate apprehension if the judge or magistrate finds that each criteria under Subsection (b) is satisfied.

(d) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 462.044 to:

(1) a treatment facility; or

(2) another appropriate facility if a treatment facility is not readily available.

(e) The warrant and copies of the application for the warrant shall be served on the person as soon as possible and transmitted to the facility.

(f) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 1, eff. Aug. 28, 1995.

Sec. 462.044. PRELIMINARY EXAMINATION. (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time the person is apprehended under Section 462.041 or 462.043.

(b) The person shall be released on completion of the preliminary examination unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.043(b).

(c) A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.045. DETENTION PERIOD. (a) A person apprehended under this subchapter may be detained for not longer than 24 hours after the time that the person is presented to the facility unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 462.065.

(b) If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained until 4 p.m. on the next day that is not a Saturday, Sunday, or legal holiday. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.046. INFORMATION TO BE PROVIDED ON ADMISSION. (a) The personnel of a treatment facility shall immediately advise a person admitted under Section 462.044 that:

(1) the person may be detained for treatment for not longer than 24 hours after the time of the initial detention unless an order for further detention is obtained;

(2) if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3) not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction under this chapter a petition to have the person committed for court-ordered treatment under Subchapter D;

(4) if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;

(5) when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;

(6) the person has the right to communicate with counsel at any reasonable time and to have assistance in contacting the counsel;

(7) the person's communications to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;

(8) the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing;

(9) the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;

(10) beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and

(11) the person is entitled to request that a hearing be held in the county of the person's residence, if the county is in the state.

(b) The personnel of the treatment facility shall provide the information required by Subsection (a) to the person orally, in writing, and in simple, nontechnical terms.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.047. RELEASE FROM EMERGENCY DETENTION. (a) A person detained under this subchapter shall be released if the facility administrator or the administrator's designee determines at any time during the emergency detention period that one of the criteria prescribed by Section 462.043(b) no longer applies.

(b) If a person is released from emergency detention and is not arrested and does not object, arrangements shall be made to return the person to the location of apprehension or other suitable place.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.048. RIGHTS OF PERSON APPREHENDED OR DETAINED. (a) A person apprehended or detained under this subchapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that detention could result in a longer period of involuntary commitment;

(2) to contact an attorney of the person's choice and to a reasonable opportunity to contact that attorney;

(3) to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;

(4) to be released from a facility as provided by Section 462.047; and

(5) to be advised that communications to a chemical dependency treatment professional may be used in proceedings for further detention.

(b) Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. COURT-ORDERED TREATMENT**

Sec. 462.061. COURT-ORDERED TREATMENT; JURISDICTION. (a) A proceeding for court-ordered treatment under this chapter shall be held in a constitutional county court, a statutory county court having probate jurisdiction, or a statutory probate court in the county in which the proposed patient resides, is found, or is receiving court-ordered treatment or treatment under Section 462.041 when the application is filed unless otherwise specifically designated.

(b) If the hearing is to be held in a constitutional county court in which the judge is not a licensed attorney, the proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.



(c) The commitment of a juvenile under this subchapter must be heard in a district court or statutory court that has juvenile or probate jurisdiction. The commitment of a juvenile under Section 462.081 may be heard only in a court that has juvenile jurisdiction.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.062. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A county or district attorney or other adult may file a sworn written application for court-ordered treatment of another person. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination for chemical dependency.

(b) The application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving treatment services by court order or under Section 462.041.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e) The application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;

(2) a statement that the proposed patient is a chemically dependent person who:

(A) is likely to cause serious harm to himself or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f) Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.063. PREHEARING PROCEDURE. (a) When the application is filed, the court shall set a date for a hearing on the merits of the application to be held within 14 days after the date on which the application is filed. The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects. The court may grant one or more continuances of the hearing on motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed.

(b) Immediately after the date for the hearing is set, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs.

(c) The court shall appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice.

(d) The court shall appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney.

(e) The court shall allow a court-appointed attorney a reasonable fee for services. The fee shall be collected as costs of the court.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.064. CERTIFICATE OF MEDICAL EXAMINATION FOR CHEMICAL

DEPENDENCY. (a) A hearing on court-ordered treatment may not be held unless there are on file with the court at least two certificates of medical examination for chemical dependency completed by different physicians each of whom has examined the proposed patient not earlier than the 30th day before the date the final hearing is held.

(b) If the certificates are not filed with the application, the court may appoint the necessary physicians to examine the proposed patient and file the certificates. The court may order the proposed patient to submit to the examinations and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations.

(c) A certificate must be dated and signed by the examining physician. The certificate must include:

- (1) the name and address of the examining physician;
- (2) the name and address of the proposed patient;
- (3) the date and place of the examination;
- (4) the period, if any, during which the proposed patient has been under the care of the examining physician;
- (5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinions whether the proposed patient is a chemically dependent person and:

- (A) is likely to cause serious harm to himself;
- (B) is likely to cause serious harm to others; or
- (C) will continue to suffer abnormal mental, emotional, or physical distress and to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

(d) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

(e) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for chemical dependency may be filed, and the person may

be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 14, eff. Sept. 1, 1991.

Sec. 462.065. ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered treatment is pending. The motion may be filed by the county or district attorney or on the court's own motion.

(b) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(c) The motion must be accompanied by a certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient not earlier than the fifth day before the date the motion is filed.

(d) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

(e) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated his opinion and the detailed basis for his opinion that the proposed patient is a chemically dependent person; and

(2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(f) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence that the proposed patient cannot

remain at liberty. The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by this subsection from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided. The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(g) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the administrator of the facility designated to detain the proposed patient agrees to the detention.

(h) A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the proposed patient immediately to a treatment facility or other suitable place for detention. The proposed patient shall be detained in the facility until a hearing is held under Section 462.066.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.066. PROBABLE CAUSE HEARING AND DETENTION. (a) The court shall set a hearing to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held not later than 72 hours after the protective custody order is signed unless the proposed patient waives the right to a hearing. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or on the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(b) The hearing shall be held before a magistrate or, at the

discretion of the presiding judge, before a master appointed by the presiding judge. The master is entitled to reasonable compensation.

(c) The proposed patient and the proposed patient's attorney are entitled to an opportunity at the hearing to appear and present evidence on any allegation or statement in the certificate of medical examination for chemical dependency. The magistrate or master may consider any evidence. The state may prove its case on the certificate.

(d) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate shall order that a proposed patient be detained until the hearing on the court-ordered treatment or until the administrator of the facility determines that the proposed patient no longer meets the criteria for detention under this section if the magistrate or master determines that probable cause does exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment.

(f) The magistrate or master shall arrange for a proposed patient detained under Subsection (e) to be returned to the treatment facility or other suitable place, along with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (g). A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to

self or others.

The proposed patient and the proposed patient's attorney \_\_\_\_\_ have been given written notice that the proposed (attorney)

patient was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_.

(date of notice)

I have examined the certificate of medical examination for chemical dependency and \_\_\_\_\_. Based

(other evidence considered)

on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes \_\_\_ or no \_\_\_) or others (yes \_\_\_ or no \_\_\_) such that (s)he cannot be at liberty pending final hearing because

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(reasons for finding; type of risk found)

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.067. HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney.

(b) The proposed patient is entitled to a hearing and to be present at the hearing, but the proposed patient or the proposed patient's attorney may waive either right.

(c) A court hearing may be held at any suitable location in the county. On the request of the proposed patient or the proposed patient's attorney, the hearing shall be held in the county courthouse.

(d) The Texas Rules of Civil Procedure and Texas Rules of Evidence apply to a hearing unless the rules are inconsistent with this chapter. The hearing is on the record, and the state must prove

each issue by clear and convincing evidence.

(e) In addition to the rights prescribed by this chapter, the proposed patient is entitled to:

- (1) present evidence on the proposed patient's own behalf;
- (2) cross-examine witnesses who testify on behalf of the applicant;
- (3) view and copy all petitions and reports in the court file of the cause; and
- (4) elect to have the hearing open or closed to the public.

(f) The proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit as evidence the certificates of medical examination for chemical dependency. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive the right to cross-examine witnesses, the court shall hear testimony. The testimony must include competent medical or psychiatric testimony.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 15, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0031, eff. Sept. 1, 2001.

Sec. 462.068. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment.

(b) If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.069. COURT ORDER AND PLACE OF TREATMENT. (a) The court shall commit the proposed patient to a treatment facility approved by the commission to accept court commitments for not more than 90 days if:



(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

(b) The judge may, on request by the proposed patient, enter an order requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor if the judge finds that the participation is in the proposed patient's best interest considering the proposed patient's impairment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.070. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is held. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 462.063 for notice before a hearing on court-ordered treatment.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.071. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the administrator of the outpatient treatment facility in which a patient receives care or treatment shall file a sworn

application for the patient's temporary detention pending the modification hearing.

(b) The application must state the applicant's opinion and detail the basis for the applicant's opinion that:

(1) the patient meets the criteria described by Section 462.072; and

(2) detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the order for temporary detention is signed, the court shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 72 hours after the time the detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

(f) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate approved inpatient treatment facility; or

(2) a suitable facility if an appropriate approved inpatient treatment facility is not available.

(g) A patient may be detained under a temporary detention order for not more than 72 hours. The exceptions applicable to the 72-hour limitation for holding a probable cause hearing for an order of protective custody under Section 462.066(a) apply to detention under this section.

(h) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention was authorized after a modification hearing was held within the period prescribed by Subsection (g).

(i) A patient released from an inpatient treatment facility under Subsection (h) continues to be subject to the order committing the person to an approved outpatient treatment facility, if the order has not expired.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.072. MODIFICATION OF ORDER FOR OUTPATIENT SERVICES.

(a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered treatment prescribed by this chapter and that:

(1) the patient has not complied with the court's order;

or

(2) the patient's condition has deteriorated to the extent that outpatient care or services are no longer appropriate.

(b) A court may refuse to modify the order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for chemical dependency signed by a physician who examined the patient not earlier than the seventh day before the date the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an approved treatment facility for inpatient care.

(e) A court may not extend the provision of court-ordered treatment beyond the period prescribed in the original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.073. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

(a) The administrator of a facility to which a patient is committed for inpatient treatment may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient care or services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for chemical dependency signed by a physician who examined the patient during the preceding seven days.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall identify a person to be responsible for the outpatient care or services.

(g) The person responsible for the care or services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(h) A modified order may not extend beyond the term of the original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.0731. OUTPATIENT CARE IN CERTAIN COUNTIES. (a) This section applies to a chemically dependent patient who is a resident of a county with a population of more than 3.3 million, according to the most recent federal decennial census, and whose inpatient commitment is modified to an outpatient commitment, who is furloughed from an inpatient facility, or who is committed to treatment on an outpatient basis.

(b) The commission shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as

close as possible to the patient's residence.

(c) A patient receiving services under this section shall report at least weekly to the person responsible for the patient's outpatient care and services.

(d) The person responsible for the patient's outpatient care or treatment shall notify the committing court of the patient's treatment plan and condition at least monthly until the end of the commitment period.

Added by Acts 1991, 72nd Leg., ch. 567, Sec. 16, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 48, eff. September 1, 2011.

Sec. 462.074. HOSPITALIZATION OUTSIDE TREATMENT FACILITY. (a) A patient receiving court-ordered treatment in a treatment facility may be transferred to a hospital if, in the opinion of a licensed physician, the patient requires immediate medical care and treatment.

(b) The hospital may, with the patient's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the patient's consent to the extent provided by other law.

(c) The patient shall be returned to the treatment facility if the order for court-ordered treatment has not expired at the completion of the hospital treatment.

(d) An order for court-ordered treatment may be renewed while the person is in the hospital.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.075. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT.

(a) A court may renew an order for court-ordered treatment entered under this subchapter.

(b) An applicant who has reasonable cause to believe that a patient remains chemically dependent and that, because of the chemical dependency, the patient is likely to cause serious physical harm to himself or others may file an application to renew the original order for court-ordered treatment. The application must

comply with the requirements of Section 462.062. The applicant must file the application not later than the 14th day before the date on which the previous order expires.

(c) The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 462.064.

(d) An application for renewal is considered an original application for court-ordered treatment. The provisions of this subchapter relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) The court shall commit the proposed patient to a treatment facility approved by the commission to accept commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.076. APPEAL. (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the case is pending may:

(1) stay the order and release the person from custody

pending the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under Section 462.065; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend any rule concerning the time for filing briefs and docketing cases.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.077. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.078. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The administrator of a facility to which a patient was admitted for court-ordered inpatient services may have an absent patient taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the patient's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as

prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(c) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility administrator's certificate or the court order. The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.079. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with commission rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health or chemical dependency professional if the person is not directly involved in treating the patient.

(c) The hearing is informal, and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 462.078(b)(1) or (2).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.



Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.080. RELEASE FROM COURT-ORDERED TREATMENT. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b) The administrator may discharge a patient before the court order expires if the administrator determines that the patient no longer meets the criteria for court-ordered treatment.

(c) The administrator of a facility to which the patient has been committed for inpatient services shall consider before discharging the patient whether the patient should receive outpatient court-ordered care or services in accordance with:

(1) a furlough under Section 462.077; or

(2) a modified order under Section 462.073 that directs the patient to participate in outpatient treatment.

(d) A discharge terminates the court order, and the person discharged may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(e) When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file it with the court that issued the order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.081. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the commission to accept court commitments for care and treatment for not more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the offense resulted from or was related to the defendant's chemical dependency;

(3) a treatment facility approved by the commission is available to treat the defendant; and

(4) the treatment facility agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is mentally ill is not eligible for sentencing under this section.

(c) The court's sentencing order is a final conviction, and the order may be appealed in the same manner as appeals are made from other judgments of that court.

(d) A juvenile court may remand a child to a treatment facility for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency;

(2) a treatment facility approved by the commission to accept court commitments is available to treat the child; and

(3) the facility agrees in writing to receive the child under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

## **CHAPTER 463. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD OR NARCOTIC ADDICT**

### **SUBCHAPTER A. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD**

Sec. 463.001. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD; CRIMINAL PENALTY. (a) In this section, "delinquency" means any act that tends to debase or injure the morals, health, or welfare of a habitual drunkard and includes:

(1) drinking intoxicating liquor;

(2) entering or remaining in any bawdy house, assignation house, disorderly house, roadhouse, hotel, or public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade;

(3) entering a place where intoxicating liquors are kept, drunk, used, or sold;

(4) associating with thieves and immoral persons;

(5) causing a habitual drunkard to leave home or to leave the custody of the drunkard's parents, guardian, or person acting for

the drunkard's parents or guardian without first receiving their consent or against their will; or

(6) causing the habitual drunkard, by undue influence, to unlawfully cohabit with a person known by the actor to be a habitual drunkard.

(b) A person commits an offense if the person by any act or in any manner encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of a habitual drunkard, regardless of the drunkard's previous convictions.

(c) An offense under this section is punishable by a fine of not more than \$500, confinement in jail for not more than one year, or both.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 177, eff. Sept. 1, 1991.

Sec. 463.002. CONFLICTING OFFENSES. To the extent of any conflict, the offenses prescribed by the Penal Code or other law enacted after June 9, 1949, prevail over the offense prescribed by Section 463.001.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 177, eff. Sept. 1, 1991.

#### **SUBCHAPTER B. CONTRIBUTING TO NARCOTIC ADDICTION**

Sec. 463.011. CONTRIBUTING TO DELINQUENCY OF NARCOTIC ADDICT; CRIMINAL PENALTY. (a) In this section, "delinquency" means any act that tends to debase or injure the morals, health, or welfare of a narcotic addict, and includes:

- (1) drinking intoxicating liquor;
- (2) going into or remaining in any bawdy house, assignation house, disorderly house, roadhouse, hotel, or public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade;
- (3) going into a place where intoxicating liquors are kept, drunk, used, or sold;
- (4) associating with thieves and immoral persons;
- (5) causing a narcotic addict to leave home or to leave the custody of the addict's parents, guardian, or person acting for the

addict's parent or guardian without first receiving that person's consent or against that person's will; or

(6) causing the addict, by undue influence, to unlawfully cohabit with a person known by the actor to be a narcotic addict.

(b) A person commits an offense if the person, by any act or in any manner, encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of a narcotic addict, regardless of the addict's previous convictions.

(c) An offense under this section is punishable by a fine of not more than \$500, confinement in jail for not more than one year, or both.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 179, eff. Sept. 1, 1991.

Sec. 463.012. CONFLICTING OFFENSES. To the extent of any conflict, the offenses defined by the Penal Code or other law enacted after June 9, 1949, prevail over the offense defined by Section 463.011.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 179, eff. Sept. 1, 1991.

Sec. 463.013. EXCEPTION. (a) In this section, "informant" means a person who has communicated information to a law enforcement official in connection with a law enforcement function.

(b) It is an exception to the application of Section 463.011(b) that the person is a law enforcement official and the narcotic addict is an informant.

Added by Acts 1999, 76th Leg., ch. 422, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 464. FACILITIES TREATING ALCOHOLICS AND DRUG-DEPENDENT PERSONS**

### **SUBCHAPTER A. REGULATION OF CHEMICAL DEPENDENCY TREATMENT FACILITIES**

Sec. 464.001. DEFINITIONS. In this subchapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(3) "Controlled substance" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

(4) "Treatment" means a planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.

(5) "Treatment facility" means:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) an outpatient care facility;

(G) a community mental health center;

(H) a health maintenance organization;

(I) a recovery center;

(J) a halfway house;

(K) an ambulatory care facility; or

(L) any other facility that offers or purports to offer treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991.

Sec. 464.002. LICENSE REQUIRED. A person may not offer or purport to offer chemical dependency treatment without a license issued under this subchapter, unless the person is exempted under Subchapter C or is working for or providing counseling with a program exempted under Subchapter C.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 663, Sec. 3, eff. Sept. 1, 1997.

Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:

- (1) a facility maintained or operated by the federal government;
- (2) a facility directly operated by the state;
- (3) a facility licensed by the Texas Department of Health;
- (4) an educational program for intoxicated drivers;
- (5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office;
- (6) an individual who personally provides counseling or support services to a chemically dependent person but does not offer or purport to offer a chemical dependency treatment program; or
- (7) a 12-step or similar self-help chemical dependency recovery program:
  - (A) that does not offer or purport to offer a chemical dependency treatment program;
  - (B) that does not charge program participants; and
  - (C) in which program participants may maintain anonymity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 410, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997.

Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To receive a license to operate a treatment facility to treat chemically dependent persons, a person must:

- (1) file a written application on a form prescribed by the commission;
  - (2) cooperate with the review of the facility; and
  - (3) comply with the licensing standards.
- (b) The commission shall issue a license to an applicant:
- (1) whose application meets the content requirements of the commission; and
  - (2) who receives approval of the facility after the commission's review; and
  - (3) who timely complies with the licensing standards.
- (c) The license is issued only for the person named in the

license and not the legal successors of that person.

(d) The license expires two years after the date on which the license is issued.

(e) A license may be issued without prior notice and an opportunity for a hearing. A person other than the applicant and commission may not contest the issuance of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991.

Sec. 464.005. LICENSE RENEWAL. (a) The commission shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The Department of State Health Services may require an inspection before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

(c) The commission may establish deadlines for receiving and acting on renewal applications.

(d) A license may be renewed without prior notice and an opportunity for a hearing. A person other than the applicant and commission may not contest the renewal of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. [1449](#)), Sec. 1, eff. September 1, 2011.

Sec. 464.0055. ACCREDITATION REVIEW TO SATISFY INSPECTION REQUIREMENTS. (a) In this section:

(1) "Accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the Department of State Health Services.

(2) "Department" means the Department of State Health Services.

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) This section does not limit the department in performing any duties, investigations, or inspections authorized by this chapter, including authority to take appropriate action relating to a treatment facility, such as closing the treatment facility.

(d) This section does not require a treatment facility to obtain accreditation from an accreditation commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. [1449](#)), Sec. 2, eff. September 1, 2011.

Sec. 464.006. INSPECTIONS. The commission or its representative may without notice enter the premises of a treatment facility at reasonable times, including any time treatment services are provided, to conduct an inspection or investigation the commission considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 182, eff. Sept. 1, 1991.

Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The commission shall charge nonrefundable application and review fees for



a license or renewal license. The commission may charge a fee for approving a facility to treat court committed clients.

(b) If the General Appropriations Act does not specify the amount of the fee, the commission shall establish reasonable fees to administer this subchapter in amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program.

(c) The commission may not maintain unnecessary fund balances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 183, eff. Sept. 1, 1991.

Sec. 464.008. ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND. All application and inspection fees collected by the commission under this subchapter are subject to Subchapter F, Chapter 404, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997.

Sec. 464.009. RULES AND STANDARDS. (a) The commission shall license treatment facilities in a manner consistent with state and federal law and rules, including commission licensing standards.

(b) The commission shall adopt rules for:

(1) a treatment facility's organization and structure, policies and procedures, and minimum staffing requirements;

(2) the services to be provided by a facility, including:

(A) the categories of services the facility may provide;

(B) the client living environment the facility requires; and

(C) the requirement that a facility provide discharge planning and client follow-up contact;

(3) client rights and standards for medication, nutrition, and emergency situations;

(4) the client records kept by a facility;

(5) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients;

(6) standards necessary to protect the client, including

standards required or authorized by federal or other state law; and

(7) the approval of a facility to treat adult or minor clients who are referred by the criminal justice system or by a court order for involuntary civil or criminal commitment or detention.

(c) The commission shall adopt rules to protect the rights of individuals receiving services from a treatment facility and to maintain the confidentiality of client records as required by state and federal law.

(d) The commission by rule may not restrict competitive bidding or advertising by a facility regulated by the commission except to prohibit false, misleading, or deceptive practices by the facility. However, those rules may not:

(1) restrict the facility's use of any medium for advertising;

(2) restrict in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) regulate the size or duration of an advertisement by the facility; or

(4) restrict the facility's advertisement under a trade name.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 184, eff. Sept. 1, 1991.

Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing services to a client at a treatment facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 5, eff. September 1, 2005.

Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the commission. This requirement is in addition to the requirements prescribed by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(b) The commission shall prescribe procedures for the

investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the commission under this section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The commission may request the attorney general's office to file a petition for temporary care and protection of a client of a residential treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the commission during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

- (1) on court order;
- (2) on written request and consent of the person under investigation or that person's authorized attorney; or
- (3) as provided by Section 464.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 185, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 7.44, eff. Sept. 1, 1997.

Sec. 464.011. DISCLOSURE OF COMMISSION RECORDS. Unless prohibited or limited by federal or other state law, the commission may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 186, eff. Sept. 1, 1991.

Sec. 464.012. HIV INFECTION EDUCATION, TESTING, AND COUNSELING.  
(a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the Texas Department of Health and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the Texas Department of Health.

(c) A treatment facility licensed under this chapter shall make available or make referrals to voluntary, anonymous, and affordable counseling and testing services concerning human immunodeficiency virus infection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 187, eff. Sept. 1, 1991.

Sec. 464.013. COMMISSION INTERACTION WITH TEXAS DEPARTMENT OF HEALTH AND OTHER AGENCIES. (a) Sections 464.007, 464.008, and 464.009 do not affect the powers and duties of the Texas Department of Health under Chapter 466. The commission by rule may recognize and defer to rules adopted by the Texas Board of Health under Chapter 466. The commission and the Texas Department of Health may enter into any agreements necessary to implement this subsection.

(b) The commission may enter into interagency agreements necessary to prevent duplication in regulatory activities by other agencies and to conserve state resources in relation to its on-site inspections under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR NONRENEWAL OF LICENSE. (a) The commission shall deny, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder or the owner, director, administrator, or a clinical staff member of the facility:

(1) has a documented history of client abuse or neglect;  
or

(2) violates this subchapter or a rule of the commission.

(b) If a license suspension is probated, the commission may establish the conditions for completion or violation of the probation.

(c) The denial, revocation, suspension, probation, or nonrenewal takes effect on the 30th day after the date on which the

notice was mailed unless:

(1) the commission secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(d) The commission may restrict attendance at an appeals hearing to the parties and their agents. A license holder whose license is suspended or revoked may not admit new clients until the license is reissued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.06, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 9, eff. Sept. 1, 1997.

Sec. 464.0145. DISCIPLINARY ACTION HEARING. (a) If the commission proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code.

(c) Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 11, eff. Sept. 1, 1997.

Sec. 464.015. INJUNCTION. (a) The commission may petition a district court to restrain a person or facility that violates the rules, standards, or licensing requirements provided under this subchapter in a manner that causes immediate threat to the health and safety of individual clients.

(b) A suit for injunctive relief, civil penalties authorized by Section 464.017, or both, must be brought in Travis County or the county in which the violation occurs.

(c) A district court, on petition of the commission, the attorney general, or a district or county attorney, and on a finding by the court that a person or facility is violating or has violated this subchapter or a standard adopted under this subchapter, shall

grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) The court granting injunctive relief shall order the person or facility to reimburse the commission and the party bringing the suit for all costs of investigation and litigation, including reasonable attorney's fees, reasonable investigative expenses, court costs, witness fees, deposition expenses, and civil administrative costs.

(e) At the request of the commission, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by Subsection (a) in the name of this state.

(f) On his own initiative, the attorney general or a district attorney or county attorney may maintain an action for injunctive relief in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(g) The injunctive relief and civil penalty authorized by this section and Section 464.017 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 188, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.07, eff. Sept. 1, 1993.

Sec. 464.016. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a treatment facility without a license. Each day of violation constitutes a separate offense.

(b) A person commits an offense if the person intentionally, maliciously, or recklessly makes a false report under Section 464.010.

(c) A person commits an offense if the person has reasonable grounds to suspect that abuse or neglect of a client may have occurred and does not report the suspected or possible abuse or neglect.

(d) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 189, eff. Sept. 1, 1991.

Sec. 464.017. CIVIL PENALTY. (a) A person or facility is subject to a civil penalty of not more than \$25,000 for each day of violation and for each act of violation of this subchapter or a rule adopted under this subchapter. In determining the amount of the civil penalty, the court shall consider:

- (1) the person's or facility's previous violations;
  - (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
  - (3) whether the health and safety of the public was threatened by the violation;
  - (4) the demonstrated good faith of the person or facility;
- and
- (5) the amount necessary to deter future violations.

(b) The commission may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 464.015; or
- (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the commission, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of this state. The commission and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(d) The civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action for civil penalties in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(f) Penalties collected under this section by the attorney general shall be deposited to the credit of the alcohol and drug abuse treatment licensure fund account. Penalties collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The commission and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.08, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 577, Sec. 10, eff. Sept. 1, 1997.

Sec. 464.018. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative under Section 464.015 or 464.017, the attorney general shall provide to the commission notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a client. This section does not create a requirement that the attorney general obtain the permission of or a referral from the commission before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993.

Sec. 464.019. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) enforcement costs relating to the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation; and



(6) any other matter that justice may require.

(d) If the executive director determines that a violation has occurred, the director may issue to the commission a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(1) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 464.0195. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 464.019 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.091, eff. Sept. 1, 1993.

Sec. 464.020. ADDITIONAL REQUIREMENTS FOR DISCIPLINARY

ALTERNATIVE EDUCATION TREATMENT PROGRAMS. (a) A disciplinary alternative education program under Section 37.008, Education Code, may apply for a license under this chapter to offer chemical dependency treatment services.

(b) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, shall employ a mental health professional, as defined by Section 164.003, to provide the services authorized by a license issued under this chapter to the disciplinary alternative education program.

(c) The commission may not issue a license that authorizes a disciplinary alternative education program to provide detoxification or residential services.

(d) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, may contract with a private treatment facility or a person employed by or under contract with a private treatment facility to provide chemical dependency treatment services. The contract may not permit the services to be provided at a site that offers detoxification or residential services. Section 164.006 applies to a contract made under this section.

Added by Acts 1999, 76th Leg., ch. 1112, Sec. 2, eff. June 18, 1999.  
Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 29, eff. June 20, 2003.

#### **SUBCHAPTER B. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS AND CENTERS**

Sec. 464.031. DEFINITIONS. In this subchapter:

(1) "Alcoholism program or center" means a public or private alcoholism prevention, intervention, treatment, or rehabilitation program or center.

(2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.032. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS OR CENTERS. (a) A county or a group of counties acting together may contract with an alcoholism program or center to provide prevention, treatment, and rehabilitation services to persons suffering from

alcoholism or at risk of becoming alcoholics.

(b) The county or group of counties may contract only with a program or center included in a list submitted under Section 464.034.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.033. APPLICATION FOR CONTRACT. (a) To be eligible to contract with a county, an alcoholism program or center providing prevention or intervention services must submit an application to the regional alcoholism advisory committee established by the commission to serve the area in which the program or center is located or in which the program or center will provide services.

(b) To be eligible to contract with a county, an alcoholism program or center providing treatment or rehabilitation services must:

(1) submit an application as provided by Subsection (a);

and

(2) be licensed by the commission.

(c) A regional alcoholism advisory committee shall adopt rules governing the procedure for submitting an application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.034. REVIEW OF CONTRACT APPLICATIONS; LIST. (a) A regional alcoholism advisory committee shall:

(1) review each application received; and

(2) rank the applications using guidelines established by the commission for reviewing funding applications.

(b) At least twice each year, each regional alcoholism advisory committee shall submit a ranked list of all applications received during the preceding six months to each county in the region the committee serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.035. PAYMENT OF CONTRACT AMOUNTS. To pay for services provided under a contract with an alcoholism program or center, the commissioners court by order may dedicate for payment to the program

or center a percentage of the money received by the county as fines for alcohol-related offenses committed while operating a motor vehicle under Sections 49.04 and 49.07, Penal Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.41, eff. Sept. 1, 1995.

**SUBCHAPTER C. FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAMS**

Sec. 464.051. DEFINITIONS. In this subchapter:

- (1) "Chemical dependency" has the meaning assigned by Section 464.001.
- (2) "Commission" has the meaning assigned by Section 464.001.
- (3) "Religious organization" means a church, synagogue, mosque, or other religious institution:
  - (A) the purpose of which is the propagation of religious beliefs; and
  - (B) that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization under Section 501(c) of that code (26 U.S.C. Section 501(c)).
- (4) "Treatment" has the meaning assigned by Section 464.001.
- (5) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.052. EXEMPTION FOR FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAM. (a) Subchapter A does not apply to a chemical dependency treatment program that:

- (1) is conducted by a religious organization;
- (2) is exclusively religious, spiritual, or ecclesiastical in nature;
- (3) does not treat minors; and
- (4) is registered under Section 464.053.

(b) The commission may not prohibit the use, by a program exempted under this subchapter, of the term "counseling," "treatment," or "rehabilitation."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The commission by rule shall establish a simple procedure for a faith-based chemical dependency treatment program to register the program's exemption under Section 464.052.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.054. MEDICAL SERVICES PROHIBITED. A program exempted under this subchapter may not provide medical care, medical detoxification, or medical withdrawal services.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR LITERATURE. A program exempted under this subchapter shall conspicuously include in any advertisement or literature that promotes or describes the program or the program's chemical dependency treatment services the following statement:

"The treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Texas Commission on Alcohol and Drug Abuse. This program offers only nonmedical treatment and recovery methods such as prayer, moral guidance, spiritual counseling, and scriptural study."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.056. DECLARATION ON ADMISSION. (a) A program exempted under this subchapter may not admit a person unless the person signs the following statement on admission:

"DECLARATION:

"I understand that:

(1) the treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Texas Commission on Alcohol and Drug Abuse; and

(2) (name of program) offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study."

signed \_\_\_\_\_ date \_\_\_\_\_

(b) The program shall:

(1) keep the original signed statement on file; and

(2) provide a copy of the signed statement to the person admitted.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.057. REVOCATION OF EXEMPTION. The commission may revoke the exemption after notice and hearing if:

(1) the organization conducting the program fails to timely inform the commission of any material change in the program's registration information;

(2) any program advertisement or literature fails to include the statements required by Section 464.055; or

(3) the organization violates this subchapter or a commission rule adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.058. GENERAL DIRECTIVE TO STATE AGENCIES. A state agency may not deny to an individual a state or federal social service benefit on the basis that the individual is participating in a faith-based residential chemical dependency treatment program.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is not intended to aid religion. This subchapter is intended to aid chemically dependent persons by supporting programs that serve the valid public purpose of combating chemical dependency, regardless of whether the programs are religious, spiritual, or ecclesiastical in nature. The exemption of faith-based chemical dependency treatment programs from licensure and regulation is not an endorsement or sponsorship by the state of the religious character, expression,



beliefs, doctrines, or practices of the treatment programs.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.060. DIRECT PUBLIC FUNDING PROHIBITED. A program exempted under this subchapter is not eligible to compete against a licensed program for direct federal or state treatment funding.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.061. EFFECT ON HEALTH AND SAFETY DUTIES OR POWERS. This subchapter does not affect the authority of a local, regional, or state health department official, the state fire marshal, or a local fire prevention official to inspect a facility used by a program exempted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

#### **CHAPTER 465. LOCAL DRUG AND ALCOHOL EDUCATION PROGRAMS**

Sec. 465.001. COMMISSION. A municipality or county may create and support with public funds a commission to:

- (1) educate the public on drug and alcohol abuse;
- (2) promote drug and alcohol education at all levels of the schools;
- (3) study the effectiveness of efforts, including the commission's efforts, in reducing drug and alcohol abuse; and
- (4) create and administer a program to counsel or treat drug and alcohol abusers or to provide both counseling and treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.002. INDIVIDUAL OR JOINT ACTION. The municipality or county may create the commission by its own action or jointly by agreement with another municipality or county or a private foundation, nonprofit organization, church, or other entity. If the commission is created by agreement, all matters regarding the creation and operation of the commission are governed as provided by

the agreement.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.003. REPORT. The commission shall report annually to each entity that participates in the creation of the commission regarding the commission's activities.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

**CHAPTER 466. REGULATION OF NARCOTIC DRUG TREATMENT PROGRAMS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 466.001. LEGISLATIVE INTENT. (a) It is the intent of the legislature that the department exercise its administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of narcotic dependent persons.

(b) Treatment of narcotic addiction by permitted treatment programs is recognized as a specialty chemical dependency treatment area using the medical model.

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of narcotic addicted persons into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the narcotic addicted person.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.12, eff. Sept. 1, 1999.

Sec. 466.002. DEFINITIONS. In this chapter:

(1) "Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance or detoxification of a person physiologically addicted to the opiate class of drugs.

(2) "Authorized agent" means an employee of the department

who is designated by the commissioner to enforce this chapter.

(3) "Board" means the Texas Board of Health.

(4) "Commissioner" means the commissioner of public health.

(5) "Department" means the Texas Department of Health.

(6) "Facility" includes a medical office, an outpatient clinic, a general or special hospital, a community mental health center, and any other location in which a structured narcotic dependency program is conducted.

(7) "Narcotic drug" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.13, eff. Sept. 1, 1999.

Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for the purpose of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.004. POWERS AND DUTIES OF BOARD AND DEPARTMENT. (a) The board shall adopt and the department shall administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of narcotic drug-dependent persons, including rules that:

(1) require an applicant or a permit holder to make annual, periodic, and special reports that the department determines are necessary;

(2) require an applicant or permit holder to keep records that the department determines are necessary;

(3) provide for investigations that the department determines are necessary; and

(4) provide for the coordination of the approval of narcotic drug treatment programs by the United States Food and Drug Administration and the United States Drug Enforcement Administration.

(b) The board shall adopt rules for the issuance of permits to operate narcotic drug treatment programs including rules:

(1) governing the submission and review of applications;

(2) establishing the criteria for the issuance and renewal of permits; and

(3) establishing the criteria for the suspension and revocation of permits.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.14, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. PERMIT**

Sec. 466.021. PERMIT REQUIRED. A person may not operate a narcotic drug treatment program unless the person has a permit issued under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of drug-dependent persons as part of a program permitted by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.15, eff. Sept. 1, 1999.

Sec. 466.023. APPLICATION FOR PERMIT; FEES. (a) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the board.

(b) A permit issued under this section is valid until suspended or revoked by the department or surrendered by the permit holder in accordance with board rules.

(c) A person must obtain a permit for each facility that the person operates.

(d) A permit issued by the department is not transferable from one facility to another facility and must be returned to the department if the permit holder sells or otherwise conveys the facility to another person.

(e) The board by rule shall establish and collect a nonrefundable application fee to defray the cost to the department of

processing each application for a permit. The application fee must be submitted with the application. An application may not be considered unless the application is accompanied by the application fee.

(f) The board shall adopt rules that set permit fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

- (1) amend permits;
- (2) inspect facilities operated by permit holders; and
- (3) implement and enforce this chapter.

(g) Fees collected by the department shall be deposited in the state treasury to the credit of the narcotic treatment permitting fee fund.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.024. PERMIT LIMITATIONS. (a) The department may issue a permit to:

- (1) a person constituting a legal entity organized and operating under the laws of this state; or
- (2) a physician.

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas State Board of Medical Examiners.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.025. INSPECTION. (a) An authorized agent may enter the facility of a person who is an applicant for a permit or who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

- (1) if the person meets the standards set in the rules of the board for the issuance of a permit; or
- (2) if a person who holds a permit is in compliance with this chapter, the standards set in the rules of the board for the operation of a facility, any special provisions contained in the

permit, or an order of the commissioner or the department.

(b) The inspection may be conducted without prior notice to the applicant or the permit holder.

(c) The authorized agent shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or the permit holder's compliance record.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The board may adopt rules to implement these recommendations.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.027. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) After notice to an applicant or a permit holder and after the opportunity for a hearing, the department may:

(1) deny an application of the person if the person fails to comply with this chapter or the rules establishing minimum standards for the issuance of a permit adopted under this chapter; or

(2) suspend or revoke the permit of a person who has violated this chapter, an order issued under this chapter, or a minimum standard required for the issuance of a permit.

(b) The board may adopt rules that establish the criteria for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of Chapter 2001, Government Code and the board's formal hearing rules.

(d) This section does not prevent the informal reconsideration of a case before the setting of a hearing or before the issuance of

the final administrative decision under this section. The program rules must contain provisions establishing the procedures for the initiation and conduct of the informal reconsideration by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 466.041. EMERGENCY ORDERS. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a permitted facility or the treatment of patients by the facility staff, in the department's jurisdiction. The order may be issued if the commissioner or the commissioner's designee determines that the treatment of patients by the staff of the permit holder creates or poses an immediate and serious threat to human life or health and other procedures available to the department to remedy or prevent the occurrence of the situation will result in an unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order, including an emergency order suspending or revoking a permit issued by the department, without notice and hearing, if the commissioner or the commissioner's designee determines that action to be practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code and the board's formal hearing rules.

(d) If an emergency order is issued to suspend or revoke the permit, the department shall ensure that treatment services for the patients are maintained at the same location until appropriate referrals to an alternate treatment program are made.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 466.042. INJUNCTION. (a) The commissioner, the commissioner's designee, or an authorized agent may request the attorney general or a district, county, or municipal attorney to petition the district court for a temporary restraining order to restrain:

(1) a continuing violation of this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit.

(b) To request a temporary restraining order, the commissioner, commissioner's designee, or an authorized agent must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

(c) On finding by the court that a person is violating or threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the court shall grant the injunctive relief warranted by the facts.

(d) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the commissioner may assess an administrative penalty against the person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.



Sec. 466.044. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a narcotic drug treatment program without a permit issued by the department.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.045. CIVIL PENALTY. (a) If it appears that a person has violated this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the commissioner may request the attorney general or the district, county, or municipal attorney of the municipality or county in which the violation occurred to institute a civil suit for the assessment and recovery of a civil penalty.

(b) The penalty may be in an amount not to exceed \$10,000 for each violation.

(c) In determining the amount of the penalty, the court shall consider:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public; and
- (4) the demonstrated good faith of the person charged.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

#### **CHAPTER 467. PEER ASSISTANCE PROGRAMS**

Sec. 467.001. DEFINITIONS. In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

- (A) established by a licensing or disciplinary

authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the department and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes); or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 17, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 26, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 21, eff. September 1, 2007.

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the department and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the department and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the department and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the department or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 22, eff.

September 1, 2007.

Sec. 467.0035. PROVISION OF SERVICES TO STUDENTS. (a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

Added by Acts 1995, 74th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1995.

Sec. 467.004. FUNDING. (a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 194, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 493, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 24, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. [3145](#)), Sec. 1, eff.

June 17, 2011.

Sec. 467.0041. FUNDING FOR TEXAS STATE BOARD OF DENTAL EXAMINERS. (a) Except as provided by this section, the Texas State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than \$50 each month from a participant in an approved peer assistance program. Fees collected under this subsection shall be remitted to the comptroller for deposit to the credit of the dental registration account.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Chapter 9, Title 71, Revised Statutes, and that are deposited in the dental registration account, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 195, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 2, Sec. 19, eff. Feb. 6, 1995; Acts 1997, 75th Leg., ch. 493, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.07, eff. Sept. 1, 1997.

Sec. 467.005. REPORTS. (a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a

professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 414, Sec. 1, eff. Sept. 1, 1997.

Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS. (a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.007. CONFIDENTIALITY. (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the

licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 245, Sec. 1, eff. Sept. 1, 1991.

Sec. 467.0075. CONSENT TO DISCLOSURE. An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

Added by Acts 1997, 75th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1997.

Sec. 467.008. CIVIL IMMUNITY. (a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

- (1) an approved peer assistance program;
- (2) the professional association or licensing or disciplinary authority operating the peer assistance program;
- (3) a member, employee, or agent of the program, association, or authority;
- (4) a person who reports or provides information concerning an impaired professional;
- (5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and
- (6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:
  - (A) knows or should have known that the professional is incapable of performing the job functions involved; or
  - (B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 468. PROGRAMS AND INITIATIVES TO PREVENT  
THE MANUFACTURE AND USE OF METHAMPHETAMINE  
SUBCHAPTER A. METHAMPHETAMINE WATCH PROGRAM**

Sec. 468.001. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of State Health Services.
- (2) "Program" means the methamphetamine watch program established under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.



Sec. 468.002. METHAMPHETAMINE WATCH PROGRAM. (a) The department shall implement a methamphetamine watch program to:

- (1) inform retailers of the problems associated with the illicit manufacture and use of methamphetamine in this state; and
- (2) encourage retailers to limit patron access to products used in the illicit manufacture of methamphetamine, including products containing pseudoephedrine.

(b) The department shall implement the program in consultation with the Department of Public Safety of the State of Texas and other state agencies as necessary. The department shall involve retailers, state and local law enforcement agencies, local governments, and community-based organizations in determining the manner in which to implement the program.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.003. RETAILER PARTICIPATION. (a) Retailer participation in the program is voluntary.

(b) A retailer participating in the program shall make reasonable efforts to deter the theft or improper sale of products used in the illicit manufacture of methamphetamine, including products containing pseudoephedrine, by:

- (1) implementing product management practices that deter theft or suspicious purchases of the products, including limiting the quantity of the products on display for purchase, limiting the quantity of the products that may be purchased, and placing the products in high-traffic areas;

- (2) placing signs adjacent to the products and at checkout counters to inform patrons of the retailer's participation in the program; and

- (3) providing annual personnel training on:

- (A) items commonly purchased for use in the illicit manufacture of methamphetamine;

- (B) product management practices that deter theft or suspicious purchases of products used in the illicit manufacture of methamphetamine; and

- (C) proper responses to observations of theft or suspicious purchases of products used in the illicit manufacture of

methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.004. GOOD FAITH REPORTING; LIMITATION ON LIABILITY.

(a) In consultation with the Department of Public Safety of the State of Texas and local law enforcement agencies, the department shall establish guidelines for retailers and retail personnel to follow in making good faith reports of thefts, suspicious purchases, or other transactions involving products used in the illicit manufacture of methamphetamine. The guidelines must be designed to ensure that:

(1) reports are made to law enforcement agencies only under circumstances that are believed to reasonably justify a criminal investigation; and

(2) a person is not encouraged to maintain any record of purchases that are made or other transactions that occur for apparently legitimate purposes.

(b) The department shall involve retailers in determining the manner in which to implement the guidelines established under Subsection (a).

(c) A person is not liable for damages, other than economic damages, from an act relating to the reporting of information made in good faith and in accordance with the guidelines established under this section.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.005. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly makes a report or causes a report to be made to a law enforcement agency of a theft, suspicious purchase, or other transaction involving a product used in the manufacture of methamphetamine and the person knows the report is false.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

**SUBCHAPTER B. PREVENTION AND EDUCATION PROGRAMS**

Sec. 468.051. PROGRAMS DESIGNED TO HELP STUDENTS. In administering human services programs as required by Section 1001.073, the Department of State Health Services shall:

(1) administer, coordinate, and contract for the delivery of programs designed to prevent the use of methamphetamine among students enrolled in a public or private school in this state; and

(2) provide education to appropriate school personnel and parents of school-age children on identifying and helping children who use methamphetamine or who are exposed to chemicals and other hazardous materials used in the manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.052. EDUCATION REGARDING ANHYDROUS AMMONIA. (a) In cooperation with other state agencies, the Office of the Texas State Chemist of the Texas Agricultural Experiment Station shall distribute materials used to educate distributors, farmers, retail dealers, cooperatives, and other appropriate persons regarding:

(1) the use of anhydrous ammonia in the illicit manufacture of methamphetamine; and

(2) practices and equipment that can be used to deter the theft of anhydrous ammonia.

(b) In the materials distributed under this section, the Office of the Texas State Chemist shall encourage local law enforcement and community groups to cooperate in deterring the theft of anhydrous ammonia.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

**SUBCHAPTER C. DRUG-ENDANGERED  
CHILD INITIATIVE**

Sec. 468.101. DEFINITIONS. In this subchapter:

(1) "Child" means a person under 18 years of age.

(2) "Department" means the Department of Family and

Protective Services.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.102. DRUG-ENDANGERED CHILD INITIATIVE. The department shall establish a drug-endangered child initiative aimed at protecting children who are exposed to methamphetamine or to chemicals and other hazardous materials used in the illicit manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.103. DUTY TO REPORT; DEPARTMENT RECORDS. (a) To the extent that reporting does not interfere with an ongoing criminal investigation, the Department of Public Safety of the State of Texas and each local law enforcement agency shall report to the department on discovering the presence of a child in a location where methamphetamine is manufactured.

(b) The department shall maintain a record of reports received under this section and shall include in the record information regarding actions taken by the department to ensure the child's safety and well-being.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

**SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES**

**CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 481.001. SHORT TITLE. This chapter may be cited as the Texas Controlled Substances Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.002. DEFINITIONS. In this chapter:

(1) "Administer" means to directly apply a controlled substance by injection, inhalation, ingestion, or other means to the body of a patient or research subject by:

(A) a practitioner or an agent of the practitioner in the presence of the practitioner; or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of a carrier or warehouseman acting in the usual and lawful course of employment.

(3) "Commissioner" means the commissioner of public health or the commissioner's designee.

(4) "Controlled premises" means:

(A) a place where original or other records or documents required under this chapter are kept or are required to be kept; or

(B) a place, including a factory, warehouse, other establishment, or conveyance, where a person registered under this chapter may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance or other item governed by this chapter, including a chemical precursor and a chemical laboratory apparatus.

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(6) "Controlled substance analogue" means:

(A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2; or

(B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2.

(7) "Counterfeit substance" means a controlled substance that, without authorization, bears or is in a container or has a label that bears an actual or simulated trademark, trade name, or

other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" means to transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.

(9) "Delivery" or "drug transaction" means the act of delivering.

(10) "Designated agent" means an individual designated under Section 481.073 to communicate a practitioner's instructions to a pharmacist.

(11) "Director" means the director of the Department of Public Safety or an employee of the department designated by the director.

(12) "Dispense" means the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

(13) "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(14) "Distribute" means to deliver a controlled substance other than by administering or dispensing the substance.

(15) "Distributor" means a person who distributes.

(16) "Drug" means a substance, other than a device or a component, part, or accessory of a device, that is:

(A) recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to either pharmacopoeia or the formulary;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) intended to affect the structure or function of the body of man or animals but is not food; or

(D) intended for use as a component of a substance described by Paragraph (A), (B), or (C).

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a material, compound, mixture, preparation, or kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of a species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a dilutant or adulterant, such as quinine hydrochloride, mannitol, inositol, nicotinamide, dextrose, lactose, or absorbent, blotter-type material, that is used or intended to be used to increase the amount or weight of or to transfer a controlled substance regardless of whether the dilutant or adulterant diminishes the efficacy of the controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(18) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or its successor statute.

(19) "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(20) "Hospital" means:

(A) a general or special hospital as defined by Section 241.003;

(B) an ambulatory surgical center licensed under Chapter 243 and approved by the federal government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours; or

(C) a freestanding emergency medical care facility licensed under Chapter 254.

(21) "Human consumption" means the injection, inhalation, ingestion, or application of a substance to or into a human body.

(22) "Immediate precursor" means a substance the director finds to be and by rule designates as being:

(A) a principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;



(B) a substance that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(C) a substance the control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance.

(23) "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(24) "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(25) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to the practitioner's administering or dispensing a controlled substance in the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(26) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of

the resin;

- (B) the mature stalks of the plant or fiber produced from the stalks;
- (C) oil or cake made from the seeds of the plant;
- (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or
- (E) the sterilized seeds of the plant that are incapable of beginning germination.

(27) "Medical purpose" means the use of a controlled substance for relieving or curing a mental or physical disease or infirmity.

(28) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(29) "Narcotic drug" means any of the following, produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (A) opium and opiates, and a salt, compound, derivative, or preparation of opium or opiates;
- (B) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical to a substance listed in Paragraph (A) other than the isoquinoline alkaloids of opium;
- (C) opium poppy and poppy straw; or
- (D) cocaine, including:
  - (i) its salts, its optical, position, or geometric isomers, and the salts of those isomers;
  - (ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and
  - (iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(30) "Opiate" means a substance that has an addiction-forming or addiction-sustaining liability similar to morphine or is capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes its racemic and

levorotatory forms. The term does not include, unless specifically designated as controlled under Subchapter B, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(31) "Opium poppy" means the plant of the species *Papaver somniferum* L., other than its seeds.

(32) "Patient" means a human for whom or an animal for which a drug:

(A) is administered, dispensed, delivered, or prescribed by a practitioner; or

(B) is intended to be administered, dispensed, delivered, or prescribed by a practitioner.

(33) "Person" means an individual, corporation, government, business trust, estate, trust, partnership, association, or any other legal entity.

(34) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(35) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this chapter and other laws relating to pharmacy.

(36) "Pharmacy" means a facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(37) "Poppy straw" means all parts, other than the seeds, of the opium poppy, after mowing.

(38) "Possession" means actual care, custody, control, or management.

(39) "Practitioner" means:

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this

state;

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(40) "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically;

(D) directions for the use of the drug;

(E) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(F) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business.

(42) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(43) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(44) "Raw material" means a compound, material, substance,

or equipment used or intended for use, alone or in any combination, in manufacturing a controlled substance.

(45) "Registrant" means a person who is registered under Section 481.063.

(46) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(47) "Official prescription form" means a prescription form that contains the prescription information required by Section 481.075.

(48) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.

(49) "Adulterant or dilutant" means any material that increases the bulk or quantity of a controlled substance, regardless of its effect on the chemical activity of the controlled substance.

(50) "Abuse unit" means:

(A) except as provided by Paragraph (B):

(i) a single unit on or in any adulterant, dilutant, or similar carrier medium, including marked or perforated blotter paper, a tablet, gelatin wafer, sugar cube, or stamp, or other medium that contains any amount of a controlled substance listed in Penalty Group 1-A, if the unit is commonly used in abuse of that substance; or

(ii) each quarter-inch square section of paper, if the adulterant, dilutant, or carrier medium is paper not marked or perforated into individual abuse units; or

(B) if the controlled substance is in liquid form, 40 micrograms of the controlled substance including any adulterant or dilutant.

(51) "Chemical precursor" means:

- (A) Methylamine;
- (B) Ethylamine;
- (C) D-lysergic acid;
- (D) Ergotamine tartrate;
- (E) Diethyl malonate;
- (F) Malonic acid;
- (G) Ethyl malonate;
- (H) Barbituric acid;

- (I) Piperidine;
- (J) N-acetylanthranilic acid;
- (K) Pyrrolidine;
- (L) Phenylacetic acid;
- (M) Anthranilic acid;
- (N) Ephedrine;
- (O) Pseudoephedrine;
- (P) Norpseudoephedrine; or
- (Q) Phenylpropanolamine.

(52) "Department" means the Department of Public Safety.

(53) "Chemical laboratory apparatus" means any item of equipment designed, made, or adapted to manufacture a controlled substance or a controlled substance analogue, including:

- (A) a condenser;
- (B) a distilling apparatus;
- (C) a vacuum drier;
- (D) a three-neck or distilling flask;
- (E) a tableting machine;
- (F) an encapsulating machine;
- (G) a filter, Buchner, or separatory funnel;
- (H) an Erlenmeyer, two-neck, or single-neck flask;
- (I) a round-bottom, Florence, thermometer, or filtering flask;
- (J) a Soxhlet extractor;
- (K) a transformer;
- (L) a flask heater;
- (M) a heating mantel; or
- (N) an adaptor tube.

(54) "Health information exchange" means an organization that:

(A) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement;

(B) as a primary business function, compiles or organizes health-related information that is designed to be securely transmitted by the organization among physicians, health care providers, or entities within a region, state, community, or hospital system; or

(C) assists in the transmission or receipt of

electronic health-related information among physicians, health care providers, or entities within:

- (i) a hospital system;
- (ii) a physician organization;
- (iii) a health care collaborative, as defined by Section 848.001, Insurance Code;
- (iv) an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or
- (v) an accountable care organization participating in the Medicare shared savings program under 42 U.S.C. Section 1395jjj.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(b), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 351, Sec. 27, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 15, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 1, 2, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 1, 5(1), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1188, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 9, eff. May 20, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 23, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 1, eff. September 1, 2013.

Sec. 481.003. RULES. (a) The director may adopt rules to administer and enforce this chapter.

(b) The director by rule shall prohibit a person in this state, including a person regulated by the Texas Department of Insurance under the Insurance Code or the other insurance laws of this state, from using a practitioner's Federal Drug Enforcement Administration number for a purpose other than a purpose described by federal law or by this chapter. A person who violates a rule adopted under this subsection commits a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 3, eff. Jan. 1, 1998.  
Amended by Acts 1999, 76th Leg., ch. 1266, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. SCHEDULES**

Sec. 481.031. NOMENCLATURE. Controlled substances listed in Schedules I through V and Penalty Groups 1 through 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.032. SCHEDULES. (a) The commissioner shall establish and modify the following schedules of controlled substances under this subchapter: Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V.

(b) A reference to a schedule in this chapter means the most current version of the schedule established or altered by the commissioner under this subchapter and published in the Texas Register on or after January 1, 1998.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.  
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 2, eff. Sept. 1, 2001.

#### **Sec. 481.033. EXCLUSION FROM SCHEDULES AND APPLICATION OF ACT.**

(a) A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) The commissioner may not include in the schedules:

- (1) a substance described by Subsection (a); or
- (2) distilled spirits, wine, malt beverages, or tobacco.

(c) A compound, mixture, or preparation containing a stimulant substance listed in Schedule II and having a potential for abuse associated with a stimulant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal



ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a stimulant effect on the central nervous system.

(d) A compound, mixture, or preparation containing a depressant substance listed in Schedule III or IV and having a potential for abuse associated with a depressant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a depressant effect on the central nervous system.

(e) A nonnarcotic prescription substance is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt prescription product under 21 C.F.R. Section 1308.32 and its subsequent amendments.

(f) A chemical substance that is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt chemical preparation under 21 C.F.R. Section 1308.24 and its subsequent amendments.

(g) An anabolic steroid product, which has no significant potential for abuse due to concentration, preparation, mixture, or delivery system, is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 532, Sec. 1, eff. Sept. 1, 1993.

Renumbered from Health & Safety Code Sec. 481.037 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.034. ESTABLISHMENT AND MODIFICATION OF SCHEDULES BY COMMISSIONER. (a) The commissioner shall annually establish the schedules of controlled substances. These annual schedules shall include the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g). Any further additions to and deletions from these schedules, any rescheduling of substances and any other modifications made by the commissioner to these schedules of controlled substances shall be made:

- (1) in accordance with Section 481.035;
- (2) in a manner consistent with this subchapter; and
- (3) with approval of the Texas Board of Health.

(b) Except for alterations in schedules required by Subsection (g), the commissioner may not make an alteration in a schedule unless the commissioner holds a public hearing on the matter in Austin and obtains approval from the Texas Board of Health.

(c) The commissioner may not:

- (1) add a substance to the schedules if the substance has been deleted from the schedules by the legislature;
- (2) delete a substance from the schedules if the substance has been added to the schedules by the legislature; or
- (3) reschedule a substance if the substance has been placed in a schedule by the legislature.

(d) In making a determination regarding a substance, the commissioner shall consider:

- (1) the actual or relative potential for its abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of its abuse;
- (5) the scope, duration, and significance of its abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychological or physiological dependence liability; and
- (8) whether the substance is a controlled substance

analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter.

(e) After considering the factors listed in Subsection (d), the commissioner shall make findings with respect to those factors and adopt a rule controlling the substance if the commissioner finds the substance has a potential for abuse.

(f) Repealed by Acts 2003, 78th Leg., ch. 1099, Sec. 17.

(g) Except as otherwise provided by this subsection, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner, the commissioner similarly shall control the substance under this chapter. After the expiration of a 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. If the commissioner objects, the commissioner shall publish the reasons for the objection and give all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish a decision, which is final unless altered by statute. On publication of an objection by the commissioner, control as to that particular substance under this chapter is stayed until the commissioner publishes the commissioner's decision.

(h) Not later than the 10th day after the date on which the commissioner designates, deletes, or reschedules a substance under Subsection (a), the commissioner shall give written notice of that action to the director and to each state licensing agency having jurisdiction over practitioners.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 481.038 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1099, Sec. 5, 17, eff. Sept. 1, 2003.

Sec. 481.035. FINDINGS. (a) The commissioner shall place a substance in Schedule I if the commissioner finds that the substance:

- (1) has a high potential for abuse; and
- (2) has no accepted medical use in treatment in the United

States or lacks accepted safety for use in treatment under medical supervision.

(b) The commissioner shall place a substance in Schedule II if the commissioner finds that:

- (1) the substance has a high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to severe psychological or physical dependence.

(c) The commissioner shall place a substance in Schedule III if the commissioner finds that:

- (1) the substance has a potential for abuse less than that of the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(d) The commissioner shall place a substance in Schedule IV if the commissioner finds that:

- (1) the substance has a lower potential for abuse than that of the substances listed in Schedule III;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to a more limited physical or psychological dependence than that of the substances listed in Schedule III.

(e) The commissioner shall place a substance in Schedule V if the commissioner finds that the substance:

- (1) has a lower potential for abuse than that of the substances listed in Schedule IV;
- (2) has currently accepted medical use in treatment in the United States; and
- (3) may lead to a more limited physical or psychological dependence liability than that of the substances listed in Schedule IV.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 481.039 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.036. PUBLICATION OF SCHEDULES. (a) The commissioner shall publish the schedules by filing a certified copy of the schedules with the secretary of state for publication in the Texas Register not later than the fifth working day after the date the commissioner takes action under this subchapter.

(b) Each published schedule must show changes, if any, made in the schedule since its latest publication.

(c) An action by the commissioner that establishes or modifies a schedule under this subchapter may take effect not earlier than the 21st day after the date on which the schedule or modification is published in the Texas Register unless an emergency exists that necessitates earlier action to avoid an imminent hazard to the public safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 481.040 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.037. CARISOPRODOL. Schedule IV includes carisoprodol.

Added by Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 4, eff. June 19, 2009.

**SUBCHAPTER C. REGULATION OF MANUFACTURE, DISTRIBUTION, AND  
DISPENSATION OF CONTROLLED SUBSTANCES, CHEMICAL PRECURSORS, AND  
CHEMICAL LABORATORY APPARATUS**

Sec. 481.061. REGISTRATION REQUIRED. (a) Except as otherwise provided by this chapter, a person who is not a registrant may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state.

(b) A person who is registered by the director to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this chapter.

(c) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, analyzes, dispenses, or possesses a controlled substance, except that the director may not require

separate registration for:

(1) a physician licensed under Subtitle B, Title 3, Occupations Code; or

(2) a practitioner engaged in research with a nonnarcotic controlled substance listed in Schedules II through V if the registrant is already registered under this subchapter in another capacity.

(d) A person shall provide the department with the person's Federal Drug Enforcement Administration number not later than the 45th day after the director issues a registration to the person under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 5, eff. Jan. 1, 1998.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 1, eff. January 1, 2014.

Sec. 481.062. EXEMPTIONS. (a) The following persons are not required to register and may possess a controlled substance under this chapter:

(1) an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V;

(4) an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating

to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties; or

(5) if the substance is tetrahydrocannabinol or one of its derivatives:

(A) a Texas Department of Health official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B) a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol.

(b) The director by rule may waive the requirement for registration of certain manufacturers, distributors, or dispensers if the director finds it consistent with the public health and safety and if the attorney general of the United States has issued a similar waiver under the Federal Controlled Substances Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 6, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(79), eff. Sept. 1, 2001.

Sec. 481.0621. EXCEPTIONS. (a) This subchapter does not apply to an educational or research program of a school district or a public or private institution of higher education. This subchapter does not apply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes materials covered by this subchapter to those educational or research programs.

(b) The department and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of the board, the department, and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of institutions of higher education.

(c) The department and the Texas Education Agency shall adopt a memorandum of understanding that establishes the responsibilities of

the agency, the department, and school districts in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of those schools and school districts.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(e), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.45, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 745, Sec. 7, eff. Jan. 1, 1998.

Sec. 481.063. REGISTRATION APPLICATION; ISSUANCE OR DENIAL.

(a) The director may refuse to issue a registration to a person to manufacture, distribute, analyze, or conduct research with a controlled substance if the person fails or refuses to provide to the director a consent form signed by the person granting the director the right to inspect the person's controlled premises and any record, controlled substance, or other item covered by this chapter.

(b) The director may not issue a registration to a person to dispense a controlled substance unless the director receives a consent form signed by the person granting the director the right to inspect records as required by this chapter.

(c) The director shall register a person to manufacture, distribute, or analyze a controlled substance listed in Schedules II through V if:

(1) the person furnishes the director evidence that the person is registered for that purpose under the Federal Controlled Substances Act;

(2) the person has made proper application and paid the applicable fee; and

(3) the person has not been found by the director to have violated a provision of Subsection (e).

(d) The director shall register a person to dispense or conduct research with a controlled substance listed in Schedules II through V if the person:

(1) is a practitioner licensed under the laws of this state;

(2) has made proper application and paid the applicable fee; and



(3) has not been found by the director to have violated a provision of Subsection (e).

(e) An application for registration to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may be denied on a finding that the applicant:

(1) has furnished material information in an application filed under this chapter that the applicant knows is false or fraudulent;

(2) has been convicted of or placed on community supervision or other probation for:

(A) a felony;

(B) a violation of this chapter or of Chapters 482-485;  
or

(C) an offense reasonably related to the registration sought;

(3) has voluntarily surrendered or has had suspended, denied, or revoked a registration or application for registration to manufacture, distribute, analyze, or dispense controlled substances under the Federal Controlled Substances Act;

(4) has had suspended, probated, or revoked a registration or a practitioner's license under the laws of this state or another state;

(5) has intentionally or knowingly failed to establish and maintain effective security controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws, this chapter, or a rule adopted under this chapter;

(6) has intentionally or knowingly failed to maintain records required to be kept by this chapter or a rule adopted under this chapter;

(7) has refused to allow an inspection authorized by this chapter or a rule adopted under this chapter;

(8) has intentionally or knowingly violated this chapter or a rule adopted under this chapter; or

(9) has voluntarily surrendered a registration that has not been reinstated.

(f) The director may inspect the premises or establishment of an applicant for registration in accordance with this chapter.

(g) Except as otherwise provided by Section 481.0645 for a physician licensed under Subtitle B, Title 3, Occupations Code, a

registration is valid until the first anniversary of the date of issuance and may be renewed annually under rules adopted by the director, unless a rule provides for a longer period of validity or renewal.

(h) Chapter 2001, Government Code, does not apply to a denial of a registration under Subsection (e)(2)(A) or (B), (e)(3), (e)(4), or (e)(9).

(i) For good cause shown, the director may probate the denial of an application for registration. If a denial of an application is probated, the director may require the person to report regularly to the department on matters that are the basis of the probation or may limit activities of the person to those prescribed by the director, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(f), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 790, Sec. 19, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 745, Sec. 8, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. [1803](#)), Sec. 2, eff. January 1, 2014.

Sec. 481.064. REGISTRATION FEES. (a) Except as otherwise provided by Section 481.0645 for a physician licensed under Subtitle B, Title 3, Occupations Code, the director may charge a nonrefundable fee of not more than \$25 before processing an application for annual registration and may charge a late fee of not more than \$50 for each application for renewal the department receives after the date the registration expires. The director by rule shall set the amounts of the fees at the amounts that are necessary to cover the cost of administering and enforcing this subchapter. Except as provided by Subsection (b) or Section 156.004, Occupations Code, registrants shall pay the fees to the director. Not later than 60 days before the date the registration expires, the director shall send a renewal notice to the registrant at the last known address of the registrant according to department records, unless the registrant is a physician to whom notice of expiration is provided under Section 156.004,

Occupations Code.

(a-1) Notwithstanding Subsection (a), the director shall continue to send renewal notices to registrants who are physicians. This subsection expires January 1, 2016.

(b) The director may authorize a contract between the department and an appropriate state agency for the collection and remittance of the fees. The director by rule may provide for remittance of the fees collected by state agencies for the department.

(c) The director shall deposit the collected fees to the credit of the operator's and chauffeur's license account in the general revenue fund. The fees may be used only by the department in the administration or enforcement of this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 9, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 3, eff. January 1, 2014.

Sec. 481.0645. REGISTRATION, RENEWAL, AND FEES FOR PHYSICIANS.

(a) The registration under this chapter of a physician licensed under Subtitle B, Title 3, Occupations Code, is valid for a period of not less than two years and expires on the same date the physician's registration permit issued by the Texas Medical Board under Chapter 156, Occupations Code, expires.

(a-1) Notwithstanding Subsection (a), a registration of a physician licensed under Subtitle B, Title 3, Occupations Code, that is in effect on January 1, 2014, expires on the date on which the physician's registration permit issued by the Texas Medical Board under Chapter 156, Occupations Code, expires. This subsection expires January 1, 2017.

(b) The director may charge a physician registered under this section a nonrefundable registration fee of not more than \$50 and a late fee for each application submitted after the expiration of the grace period described by Section 156.004(b), Occupations Code.

(c) A physician may request the renewal of the physician's registration under this chapter by remitting the information required under Section 481.063 and the fee required under Subsection (b) to the Texas Medical Board. The Texas Medical Board must allow a physician to submit the information and pay the fee electronically.

(d) A physician requesting renewal under this section must meet all eligibility requirements under Section 481.063(e).

(e) The director shall adopt any rules necessary to administer this section. The director shall coordinate with the Texas Medical Board in the adoption of rules necessary under this section to prevent any conflicts between rules adopted by the agencies and to ensure that administrative burden to physicians is minimized.

Added by Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 4, eff. January 1, 2014.

Sec. 481.065. AUTHORIZATION FOR CERTAIN ACTIVITIES. (a) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by a person engaged in research, training animals to detect controlled substances, or designing or calibrating devices to detect controlled substances. A person who obtains an authorization under this subsection does not commit an offense involving the possession or distribution of controlled substances to the extent that the possession or distribution is authorized.

(b) A person may conduct research with or analyze substances listed in Schedule I in this state only if the person is a practitioner registered under federal law to conduct research with or analyze those substances and the person provides the director with evidence of federal registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.066. VOLUNTARY SURRENDER, CANCELLATION, SUSPENSION, PROBATION, OR REVOCATION OF REGISTRATION. (a) The director may accept a voluntary surrender of a registration.

(b) The director may cancel, suspend, or revoke a registration, place on probation a person whose license has been suspended, or reprimand a registrant for a cause described by Section 481.063(e).

(c) The director may cancel a registration that was issued in error.

(d) The director may limit the cancellation, suspension, probation, or revocation to the particular schedule or controlled substance within a schedule for which grounds for cancellation, suspension, probation, or revocation exist.

(e) After accepting the voluntary surrender of a registration or ordering the cancellation, suspension, probation, or revocation of a registration, the director may seize or place under seal all controlled substances owned or possessed by the registrant under the authority of that registration. If the director orders the cancellation, suspension, probation, or revocation of a registration, a disposition may not be made of the seized or sealed substances until the time for administrative appeal of the order has elapsed or until all appeals have been concluded, except that the director may order the sale of perishable substances and deposit of the proceeds of the sale in a special interest-bearing account in the general revenue fund. When a surrender or cancellation, suspension, probation, or revocation order becomes final, all controlled substances may be forfeited to the state as provided under Subchapter E.

(f) The operation of a registrant in violation of this section is a public nuisance, and the director may apply to any court of competent jurisdiction for an injunction suspending the registration of the registrant.

(g) Chapter 2001, Government Code, applies to a proceeding under this section to the extent that that chapter does not conflict with this subchapter. Chapter 2001, Government Code, does not apply to a cancellation, suspension, probation, or revocation of a registration for a cause described by Section 481.063(e)(2)(A) or (B), (e)(3), (e)(4), or (e)(9).

(h) The director shall promptly notify appropriate state agencies of an order accepting a voluntary surrender or canceling, suspending, probating, or revoking a registration and the forfeiture of controlled substances.

(i) The director shall give written notice to the applicant or registrant of the acceptance of a voluntary surrender of a registration, or of the cancellation, suspension, probation, revocation, or denial of a registration. The notice shall be sent by certified mail, return receipt requested, to the most current address

of the applicant or registrant contained in department files.

(j) After a voluntary surrender, cancellation, suspension, probation, revocation, or denial of a registration, on petition of the applicant or former registrant, the director may issue or reinstate the registration for good cause shown by the petitioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 10, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 6, eff. Sept. 1, 2001.

Sec. 481.067. RECORDS. (a) A person who is registered to manufacture, distribute, analyze, or dispense a controlled substance shall keep records and maintain inventories in compliance with recordkeeping and inventory requirements of federal law and with additional rules the director adopts.

(b) The pharmacist-in-charge of a pharmacy shall maintain the records and inventories required by this section.

(c) A record required by this section must be made at the time of the transaction that is the basis of the record. A record or inventory required by this section must be kept or maintained for at least two years after the date the record or inventory is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 7, eff. Sept. 1, 2001.

Sec. 481.068. CONFIDENTIALITY. (a) The director may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and other identifying characteristics of individuals who are the subjects of the research. A person who obtains the authorization may not be compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of the research for which the authorization is obtained.

(b) Except as provided by Sections 481.074 and 481.075, a practitioner engaged in authorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the department, the director of the Texas Commission on Alcohol and Drug Abuse, or any other agency, public official, or law enforcement officer. A practitioner may not be

compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(c) The director may not provide to a federal, state, or local law enforcement agency the name or identity of a patient or research subject whose identity could not be obtained under Subsection (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 8, eff. Sept. 1, 2001.

Sec. 481.069. ORDER FORMS. A registrant may not distribute or order a controlled substance listed in Schedule I or II to or from another registrant except under an order form. A registrant complying with the federal law concerning order forms is in compliance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(g), eff. Sept. 1, 1989.

Sec. 481.070. ADMINISTERING OR DISPENSING SCHEDULE I CONTROLLED SUBSTANCE. Except as permitted by this chapter, a person may not administer or dispense a controlled substance listed in Schedule I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.071. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. (a) A practitioner defined by Section 481.002(39)(A) may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.

(b) An anabolic steroid or human growth hormone listed in Schedule III may only be:

(1) dispensed, prescribed, delivered, or administered by a practitioner, as defined by Section 481.002(39)(A), for a valid medical purpose and in the course of professional practice; or

(2) dispensed or delivered by a pharmacist according to a prescription issued by a practitioner, as defined by Section 481.002(39)(A) or (C), for a valid medical purpose and in the course of professional practice.

(c) For the purposes of Subsection (b), bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone listed in Schedule III by a person who is in good health is not a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(b), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 11, eff. Jan. 1, 1998.

Sec. 481.072. MEDICAL PURPOSE REQUIRED BEFORE DISTRIBUTING OR DISPENSING SCHEDULE V CONTROLLED SUBSTANCE. A person may not distribute or dispense a controlled substance listed in Schedule V except for a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.073. COMMUNICATION OF PRESCRIPTIONS BY AGENT. (a) Only a practitioner defined by Section 481.002(39)(A) and an agent designated in writing by the practitioner in accordance with rules adopted by the department may communicate a prescription by telephone. A pharmacy that receives a telephonically communicated prescription shall promptly write the prescription and file and retain the prescription in the manner required by this subchapter. A practitioner who designates an agent to communicate prescriptions shall maintain the written designation of the agent in the practitioner's usual place of business and shall make the designation available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, and the department. A practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this section.

(b) On the request of a pharmacist, a practitioner shall furnish a copy of the written designation authorized under Subsection



(a).

(c) This section does not relieve a practitioner or the practitioner's designated agent from the requirement of Subchapter A, Chapter 562, Occupations Code. A practitioner is personally responsible for the actions of the designated agent in communicating a prescription to a pharmacist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.794, eff. Sept. 1, 2001.

Sec. 481.074. PRESCRIPTIONS. (a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice;

(2) dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship;

(3) fill a prescription that is not prepared or issued as prescribed by this chapter;

(4) permit or allow a person who is not a licensed pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(5) permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance, except as provided by Subsection (n).

(b) Except in an emergency as defined by rule of the director or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without a written prescription of a practitioner on an official prescription form or without an electronic prescription that

meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written or electronic prescription, completed in the manner required by Section 481.075, to be delivered to the dispensing pharmacist at the pharmacy where the prescription was dispensed. A written prescription may be delivered in person or by mail. The envelope of a prescription delivered by mail must be postmarked not later than the seventh day after the date the prescription was authorized. On receipt of a written prescription, the dispensing pharmacy shall file the transcription of the telephonically communicated prescription and the pharmacy copy and shall send information to the director as required by Section 481.075. On receipt of an electronic prescription, the pharmacist shall annotate the electronic prescription record with the original authorization and date of the emergency oral or telephonically communicated prescription.

(d) Except as specified in Subsections (e) and (f), the director, by rule and in consultation with the Texas Medical Board and the Texas State Board of Pharmacy, shall establish the period after the date on which the prescription is issued that a person may fill a prescription for a controlled substance listed in Schedule II. A person may not refill a prescription for a substance listed in Schedule II.

(d-1) Notwithstanding Subsection (d), a prescribing practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance if:

(1) each separate prescription is issued for a legitimate medical purpose by a prescribing practitioner acting in the usual course of professional practice;

(2) the prescribing practitioner provides instructions on each prescription to be filled at a later date indicating the earliest date on which a pharmacy may fill each prescription;

(3) the prescribing practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the issuance of multiple prescriptions complies with other applicable state and federal laws.

(e) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or electronic prescription or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription, on the written record of the emergency oral prescription, or in the electronic prescription record. The remaining portion of the prescription may be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

(f) A prescription for a Schedule II controlled substance for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner before partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record the prescription on an official prescription form or in the electronic prescription record and must indicate on the official prescription form or in the electronic prescription record whether the patient is "terminally ill" or an "LTCF patient." A prescription

that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" is considered to have been filled in violation of this chapter. For each partial filling, the dispensing pharmacist shall record on the back of the official prescription form or in the electronic prescription record the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(g) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a written, electronic, oral, or telephonically communicated prescription of a practitioner defined by Section 481.002(39)(A) or (D), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection must comply with other applicable state and federal laws.

(h) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under a written, electronic, oral, or telephonically communicated prescription issued by a practitioner defined by Section 481.002(39)(C) and only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(i) A person may not dispense a controlled substance listed in Schedule V and containing 200 milligrams or less of codeine, or any

of its salts, per 100 milliliters or per 100 grams, or containing 100 milligrams or less of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams, without the prescription of a practitioner defined by Section 481.002(39)(A), except that a practitioner may dispense the substance directly to an ultimate user. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(j) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

- (1) the substance was dispensed under a medication order while the patient was admitted to the hospital;
- (2) the substance is in a properly labeled container; and
- (3) the patient possesses not more than a seven-day supply of the substance.

(k) A prescription for a controlled substance must show:

- (1) the quantity of the substance prescribed:
  - (A) numerically, followed by the number written as a word, if the prescription is written;
  - (B) numerically, if the prescription is electronic; or
  - (C) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;
- (2) the date of issue;
  - (2-a) if the prescription is issued for a Schedule II controlled substance to be filled at a later date under Subsection (d-1), the earliest date on which a pharmacy may fill the prescription;
- (3) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;
- (4) the name and strength of the controlled substance prescribed;
- (5) the directions for use of the controlled substance;
- (6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient;
- (7) the name, address, Federal Drug Enforcement Administration number, and telephone number of the practitioner at

the practitioner's usual place of business, which must be legibly printed or stamped on a written prescription; and

(8) if the prescription is handwritten, the signature of the prescribing practitioner.

(1) A pharmacist may exercise his professional judgment in refilling a prescription for a controlled substance in Schedule III, IV, or V without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(1-1) Notwithstanding Subsection (1), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the Texas State Board of Pharmacy, through its executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(1-2) The prescribing practitioner is not liable for an act or

omission by a pharmacist in dispensing a prescription drug under Subsection (l-1).

(m) A pharmacist may permit the delivery of a controlled substance by an authorized delivery person, by a person known to the pharmacist, a pharmacist intern, or the authorized delivery person, or by mail to the person or address of the person authorized by the prescription to receive the controlled substance. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years:

(1) the name of the authorized delivery person, if delivery is made by that person;

(2) the name of the person known to the pharmacist, a pharmacist intern, or the authorized delivery person if delivery is made by that person; or

(3) the mailing address to which delivery is made, if delivery is made by mail.

(n) A pharmacist may permit the delivery of a controlled substance to a person not known to the pharmacist, a pharmacist intern, or the authorized delivery person without first requiring the identification of the person to whom the controlled substance is delivered if the pharmacist determines that an emergency exists and that the controlled substance is needed for the immediate well-being of the patient for whom the controlled substance is prescribed. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years all information relevant to the delivery known to the pharmacist, including the name, address, and date of birth or age of the person to whom the controlled substance is delivered.

(o) A pharmacist may dispense a Schedule II controlled substance pursuant to a facsimile copy of an official prescription completed in the manner required by Section 481.075 and transmitted by the practitioner or the practitioner's agent to the pharmacy if:

(1) the prescription is written for:

(A) a Schedule II narcotic or nonnarcotic substance for a patient in a long-term care facility (LTCF), and the practitioner notes on the prescription "LTCF patient";

(B) a Schedule II narcotic product to be compounded for the direct administration to a patient by parenteral, intravenous,

intramuscular, subcutaneous, or intraspinal infusion; or

(C) a Schedule II narcotic substance for a patient with a medical diagnosis documenting a terminal illness or a patient enrolled in a hospice care program certified or paid for by Medicare under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), as amended, by Medicaid, or by a hospice program that is licensed under Chapter 142, and the practitioner or the practitioner's agent notes on the prescription "terminally ill" or "hospice patient"; and

(2) after transmitting the prescription, the prescribing practitioner or the practitioner's agent:

(A) writes across the face of the official prescription "VOID--sent by fax to (name and telephone number of receiving pharmacy)"; and

(B) files the official prescription in the patient's medical records instead of delivering it to the patient.

(p) On receipt of the prescription, the dispensing pharmacy shall file the facsimile copy of the prescription and shall send information to the director as required by Section 481.075.

(q) Each dispensing pharmacist shall send all information required by the director, including any information required to complete the Schedule III through V prescription forms, to the director by electronic transfer or another form approved by the director not later than the seventh day after the date the prescription is completely filled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(h), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 615, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 761, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 351, Sec. 28, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 12, 13, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. [1188](#)), Sec. 21(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1345 (S.B. [410](#)), Sec. 44(a), eff. June



18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 535 (S.B. 994), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 567 (S.B. 1658), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.007, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 2, eff. September 1, 2011.

Sec. 481.075. OFFICIAL PRESCRIPTION PROGRAM. (a) A practitioner who prescribes a controlled substance listed in Schedule II shall, except as provided by rule adopted under Section 481.0761, record the prescription on an official prescription form or in an electronic prescription that includes the information required by this section.

(b) Each official prescription form must be sequentially numbered.

(c) The director shall issue official prescription forms to practitioners for a fee covering the actual cost of printing, processing, and mailing the forms at 100 a package. Before mailing or otherwise delivering prescription forms to a practitioner, the director shall print on each form the number of the form and any other information the director determines is necessary.

(d) A person may not obtain an official prescription form unless the person is a practitioner as defined by Section 481.002(39)(A) or an institutional practitioner.

(e) Each official prescription form or electronic prescription used to prescribe a Schedule II controlled substance must contain:

(1) information provided by the prescribing practitioner,

including:

- (A) the date the prescription is issued;
- (B) the controlled substance prescribed;
- (C) the quantity of controlled substance prescribed,

shown:

(i) numerically, followed by the number written as a word, if the prescription is written; or

(ii) numerically, if the prescription is electronic;

(D) the intended use of the controlled substance or the diagnosis for which it is prescribed and the instructions for use of the substance;

(E) the practitioner's name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state;

(F) the name, address, and date of birth or age of the person for whom the controlled substance is prescribed; and

(G) if the prescription is issued to be filled at a later date under Section 481.074(d-1), the earliest date on which a pharmacy may fill the prescription;

(2) information provided by the dispensing pharmacist, including the date the prescription is filled; and

(3) for a written prescription, the signatures of the prescribing practitioner and the dispensing pharmacist or for an electronic prescription, the prescribing practitioner's electronic signature or other secure method of validation authorized by federal law.

(f) Not more than one prescription may be recorded on an official prescription form, except as provided by rule adopted under Section 481.0761.

(g) Except for an oral prescription prescribed under Section 481.074(b), the prescribing practitioner shall:

(1) legibly fill in, or direct a designated agent to legibly fill in, on the official prescription form or in the electronic prescription, each item of information required to be provided by the prescribing practitioner under Subsection (e)(1), unless the practitioner determines that:

(A) under rule adopted by the director for this purpose, it is unnecessary for the practitioner or the practitioner's agent to provide the patient identification number; or

(B) it is not in the best interest of the patient for the practitioner or practitioner's agent to provide information regarding the intended use of the controlled substance or the diagnosis for which it is prescribed; and

(2) sign the official prescription form and give the form to the person authorized to receive the prescription or, in the case of an electronic prescription, electronically sign or validate the electronic prescription as authorized by federal law and transmit the prescription to the dispensing pharmacy.

(h) In the case of an oral prescription prescribed under Section 481.074(b), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the official prescription form or electronic prescription record.

(i) Each dispensing pharmacist shall:

(1) fill in on the official prescription form or note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and the date the prescription is filled, and:

(A) for a written prescription, fill in the dispensing pharmacist's signature; or

(B) for an electronic prescription, appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form or the electronic prescription record, as applicable; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all information required by the director, including any information required to complete an official prescription form or electronic prescription record, to the director by electronic transfer or another form approved by the director not later than the seventh day after the date the prescription is completely filled.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be on an official prescription form or in an electronic prescription record that meets the requirements of this section.

(k) Not later than the 30th day after the date a practitioner's department registration number, Federal Drug Enforcement Administration number, or license to practice has been denied, suspended, canceled, surrendered, or revoked, the practitioner shall return to the department all official prescription forms in the practitioner's possession that have not been used for prescriptions.

(1) Each prescribing practitioner:

(1) may use an official prescription form only to prescribe a controlled substance;

(2) shall date or sign an official prescription form only on the date the prescription is issued; and

(3) shall take reasonable precautionary measures to ensure that an official prescription form issued to the practitioner is not used by another person to violate this subchapter or a rule adopted under this subchapter.

(m) A pharmacy in this state may fill a prescription for a controlled substance listed in Schedule II issued by a practitioner in another state if:

(1) a share of the pharmacy's business involves the dispensing and delivery or mailing of controlled substances;

(2) the prescription is issued by a prescribing practitioner in the other state in the ordinary course of practice; and

(3) the prescription is filled in compliance with a written plan providing the manner in which the pharmacy may fill a Schedule II prescription issued by a practitioner in another state that:

(A) is submitted by the pharmacy to the director; and

(B) is approved by the director in consultation with the Texas State Board of Pharmacy.

(n) Repealed by Acts 1999, 76th Leg., ch. 145, Sec. 5(2), eff. Sept. 1, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(i), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 789, Sec. 17, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 14, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 3, 5(2), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 2, eff. June

19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 3, eff. September 1, 2011.

Sec. 481.076. OFFICIAL PRESCRIPTION INFORMATION. (a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

(3) if the director finds that proper need has been shown to the director:

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or a pharmacy technician, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist or a practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) or a nurse licensed under Chapter 301, Occupations Code, acting at the direction of a practitioner and is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(a-1) A person authorized to receive information under Subsection (a)(3)(B) or (C) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) A person authorized to receive information under

Subsection (a)(3)(B) may include that information in any form in the medical or pharmacy record of the patient who is the subject of the information. Any information included in a patient's medical or pharmacy record under this subsection is subject to any applicable state or federal confidentiality or privacy laws.

(b) This section does not prohibit the director from creating, using, or disclosing statistical data about information received by the director under this section if the director removes any information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information.

(c) The director by rule shall design and implement a system for submission of information to the director by electronic or other means and for retrieval of information submitted to the director under this section and Sections 481.074 and 481.075. The director shall use automated information security techniques and devices to preclude improper access to the information. The director shall submit the system design to the Texas State Board of Pharmacy and the Texas Medical Board for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

(d) Information submitted to the director under this section may be used only for:

(1) the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(2) investigatory or evidentiary purposes in connection with the functions of an agency listed in Subsection (a)(1); or

(3) dissemination by the director to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed.

(e) The director shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the director not later than the end of the 36th calendar month after the month in which the identity is entered into the system. However, the director may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

(f) If the director permits access to information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the director shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the director determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) If the director permits access to information under Subsection (a)(3)(A) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the director shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the director withholds notification to an agency under Subsection (f), the director shall notify the agency of the disclosure of the information and the reason for withholding notification when the director determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

(i) Information submitted to the director under Section 481.074(q) or 481.075 is confidential and remains confidential regardless of whether the director permits access to the information under this section.

(j) Repealed by Acts 1999, 76th Leg., ch. 145, Sec. 5(3), eff. Sept. 1, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 81, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 745, Sec. 15, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 4, 5(3), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. [1879](#)), Sec. 3, eff. September 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. [594](#)), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. [1273](#)), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. [1643](#)), Sec. 2, eff. September 1, 2013.

Sec. 481.0761. RULES; AUTHORITY TO CONTRACT. (a) The director shall consult with the Texas State Board of Pharmacy and by rule establish and revise as necessary a standardized database format that may be used by a pharmacy to transmit the information required by Sections 481.074(q) and 481.075(i) to the director electronically or to deliver the information on storage media, including disks, tapes, and cassettes.

(b) The director shall consult with the Department of State Health Services, the Texas State Board of Pharmacy, and the Texas Medical Board and by rule may:

(1) remove a controlled substance listed in Schedules II through V from the official prescription program, if the director determines that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or

(2) return a substance previously removed from Schedules II through V to the official prescription program, if the director determines that the risk of diversion substantially outweighs the burden imposed by the program on the particular controlled substance.

(c) The director by rule may:

(1) permit more than one prescription to be administered or dispensed and recorded on one prescription form for a Schedule III through V controlled substance;

(1-a) establish a procedure for the issuance of multiple prescriptions of a Schedule II controlled substance under Section 481.074(d-1);

(2) remove from or return to the official prescription program any aspect of a practitioner's or pharmacist's hospital practice, including administering or dispensing;

(3) waive or delay any requirement relating to the time or manner of reporting;

(4) establish compatibility protocols for electronic data transfer hardware, software, or format;

(5) establish a procedure to control the release of information under Sections 481.074, 481.075, and 481.076; and

(6) establish a minimum level of prescription activity below which a reporting activity may be modified or deleted.

(d) The director by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number on the official



prescription form or in the electronic prescription record.

(e) In adopting a rule relating to the electronic transfer of information under this subchapter, the director shall consider the economic impact of the rule on practitioners and pharmacists and, to the extent permitted by law, act to minimize any negative economic impact, including the imposition of costs related to computer hardware or software or to the transfer of information. The director may not adopt a rule relating to the electronic transfer of information under this subchapter that imposes a fee in addition to the fees authorized by Section 481.064.

(f) The director may authorize a contract between the department and another agency of this state or a private vendor as necessary to ensure the effective operation of the official prescription program.

(g) Repealed by Acts 1999, 76th Leg., ch. 145, Sec. 5(4), eff. Sept. 1, 1999.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 16, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 145, Sec. 5(4), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 5, eff. September 1, 2011.

Sec. 481.077. CHEMICAL PRECURSOR RECORDS AND REPORTS. (a) Except as provided by Subsection (1), a person who sells, transfers, or otherwise furnishes a chemical precursor to another person shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The director by rule may:

(1) name an additional chemical substance as a chemical precursor for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the chemical substance in the illicit manufacture of a controlled substance or controlled substance

analogue; or

(2) exempt a chemical precursor from the requirements of Subsection (a) if the director determines that the chemical precursor does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(b-1) If the director names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor, a substance that is a precursor of the chemical precursor or the immediate precursor is not subject to control solely because it is a precursor of the chemical precursor or the immediate precursor.

(c) This section and Section 481.078 do not apply to a person to whom a registration has been issued under Section 481.063.

(d) Before selling, transferring, or otherwise furnishing to a person in this state a chemical precursor subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the chemical precursor is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the chemical precursor is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(e) If the recipient does not represent a business, the recipient shall present to the manufacturer, wholesaler, retailer, or

other person a permit issued in the name of the recipient by the department under Section 481.078.

(f) Except as provided by Subsection (h), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to a person in this state a chemical precursor subject to Subsection (a) shall submit, at least 21 days before the delivery of the chemical precursor, a report of the transaction on a form obtained from the director that includes the information required by Subsection (d).

(g) The director shall supply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a chemical precursor subject to Subsection (a) a form for the submission of:

(1) the report required by Subsection (f);

(2) the name and measured amount of the chemical precursor delivered; and

(3) any other information required by the director.

(h) The director may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by Subsection (f) if the director determines that:

(1) there is a pattern of regular supply and purchase of the chemical precursor between the furnisher and the recipient; or

(2) the recipient has established a record of use of the chemical precursor solely for a lawful purpose.

(i) A manufacturer, wholesaler, retailer, or other person who receives from a source outside this state a chemical precursor subject to Subsection (a) or who discovers a loss or theft of a chemical precursor subject to Subsection (a) shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the amount of the chemical precursor actually received and the amount of the chemical precursor shipped according to the shipping statement or invoice; or

(B) the amount of the loss or theft.

(j) A report under Subsection (i) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the chemical precursor, include the name of the common carrier or person who transported the chemical precursor and the date that the chemical precursor was shipped.

(k) Unless the person is the holder of only a permit issued under Section 481.078(b)(1), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical precursor subject to Subsection (a) or a permit holder, commercial purchaser, or other person who receives a chemical precursor subject to Subsection (a):

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

(1) This section does not apply to the sale or transfer of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, or norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(k), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 17, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 570, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 4, eff. August 1, 2005.

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) A wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall:

(1) before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number; and

(2) make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The wholesaler shall make all records available to the director in accordance with department rule, including:

(1) the information required by Subsection (a)(1);

(2) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine delivered; and

(3) any other information required by the director.

(c) Not later than 10 business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of the product as determined by department rule, a wholesaler shall submit to the director a report of the order in accordance with department rule.

(d) A wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) may be subject to disciplinary action in accordance with department rule.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 5, eff. August 1, 2005.

Sec. 481.078. CHEMICAL PRECURSOR TRANSFER PERMIT. (a) A person must obtain a chemical precursor transfer permit from the department to be eligible:

(1) to sell, transfer, or otherwise furnish a chemical precursor subject to Section 481.077(a) to a person in this state;

(2) to receive a chemical precursor subject to Section 481.077(a) from a source outside this state; or

(3) to receive a chemical precursor subject to Section 481.077(a) if the person, in receiving the chemical precursor, does not represent a business.

(b) The director by rule shall adopt procedures and standards for the issuance and renewal or the voluntary surrender, cancellation, suspension, probation, or revocation of:

(1) a permit for one sale, transfer, receipt, or otherwise furnishing of a chemical precursor; or

(2) a permit for more than one sale, transfer, receipt, or otherwise furnishing of a chemical precursor.

(c) A permit issued or renewed under Subsection (b)(1) is valid only for the transaction indicated on the permit. A permit issued or renewed under Subsection (b)(2) is valid for one year after the date of issuance or renewal.

(d) A permit holder must report in writing or by telephone to the director a change in the holder's business name, address, area code, and telephone number not later than the seventh day after the date of the change.

(e) The director may not issue a permit under this section unless the person applying for the permit delivers to the director a written consent to inspect signed by the person that grants to the director the right to inspect any controlled premises, record, chemical precursor, or other item governed by this chapter in the care, custody, or control of the person. After the director receives the consent, the director may inspect any controlled premises, record, chemical precursor, or other item to which the consent applies.

(f) The director may adopt rules to establish security controls and provide for the inspection of a place, entity, or item to which a chemical precursor transfer permit applies.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(1), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 18, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 13, eff. Sept. 1, 2001.

Sec. 481.080. CHEMICAL LABORATORY APPARATUS RECORD-KEEPING REQUIREMENTS AND PENALTIES. (a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a chemical laboratory apparatus shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The director may adopt rules to implement this section.

(c) The director by rule may:

(1) name an additional item of equipment as a chemical laboratory apparatus for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the item of equipment in the illicit manufacture of a controlled substance or controlled substance analogue; or

(2) exempt a chemical laboratory apparatus from the requirement of Subsection (a) if the director determines that the apparatus does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(d) This section and Section 481.081 do not apply to a person to whom a registration has been issued under Section 481.063.

(e) Before selling, transferring, or otherwise furnishing to a person in this state a chemical laboratory apparatus subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the apparatus is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the apparatus is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(f) If the recipient does not represent a business, the recipient shall present to the manufacturer, wholesaler, retailer, or other person a permit issued in the name of the recipient by the department under Section 481.081.

(g) Except as provided by Subsection (i), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to a person in this state a chemical laboratory apparatus subject to Subsection (a) shall, at least 21 days before

the delivery of the apparatus, submit a report of the transaction on a form obtained from the director that includes the information required by Subsection (e).

(h) The director shall supply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a chemical laboratory apparatus subject to Subsection (a) a form for the submission of:

- (1) the report required by Subsection (g);
- (2) the name and number of apparatus delivered; and
- (3) any other information required by the director.

(i) The director may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by Subsection (g) if the director determines that:

- (1) there is a pattern of regular supply and purchase of the apparatus between the furnisher and the recipient; or
- (2) the recipient has established a record of use of the apparatus solely for a lawful purpose.

(j) A manufacturer, wholesaler, retailer, or other person who receives from a source outside this state a chemical laboratory apparatus subject to Subsection (a) or who discovers a loss or theft of such an apparatus shall:

- (1) submit a report of the transaction to the director in accordance with department rule; and
- (2) include in the report:
  - (A) any difference between the number of the apparatus actually received and the number of the apparatus shipped according to the shipping statement or invoice; or
  - (B) the number of the loss or theft.

(k) A report under Subsection (j) must:

- (1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and
- (2) if the discrepancy, loss, or theft occurred during a shipment of the apparatus, include the name of the common carrier or person who transported the apparatus and the date that the apparatus was shipped.

(1) This subsection applies to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical laboratory apparatus subject to Subsection (a)



and to a permit holder, commercial purchaser, or other person who receives such an apparatus unless the person is the holder of only a permit issued under Section 481.081(b)(1). A person covered by this subsection:

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(1), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 19, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 14, eff. Sept. 1, 2001.

Sec. 481.081. CHEMICAL LABORATORY APPARATUS TRANSFER PERMIT.

(a) A person must obtain a chemical laboratory apparatus transfer permit from the department to be eligible:

(1) to sell, transfer, or otherwise furnish an apparatus subject to Section 481.080(a) to a person in this state;

(2) to receive an apparatus subject to Section 481.080(a) from a source outside this state; or

(3) to receive an apparatus subject to Section 481.080(a) if the person, in receiving the apparatus, does not represent a business.

(b) The director by rule shall adopt procedures and standards for the issuance and renewal or the voluntary surrender, cancellation, suspension, probation, or revocation of:

(1) a permit for one sale, transfer, receipt, or otherwise furnishing of a chemical laboratory apparatus; or

(2) a permit for more than one sale, transfer, receipt, or otherwise furnishing of a chemical laboratory apparatus.

(c) A permit issued or renewed under Subsection (b)(1) is valid only for the transaction indicated on the permit. A permit issued or renewed under Subsection (b)(2) is valid for one year after the date of issuance or renewal.

(d) A permit holder must report in writing or by telephone to

the director a change in the holder's business name, address, area code, and telephone number not later than the seventh day after the date of the change.

(e) The director may not issue a permit under this section unless the person applying for the permit delivers to the director a written consent to inspect signed by the person that grants to the director the right to inspect any controlled premises, record, chemical laboratory apparatus, or other item governed by this chapter in the care, custody, or control of the person. After the director receives the consent, the director may inspect any controlled premises, record, chemical laboratory apparatus, or other item to which the consent applies.

(f) The director may by rule establish security controls and provide for the inspection of a place, entity, or item to which a chemical laboratory apparatus transfer permit applies.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(1), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 20, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 15, eff. Sept. 1, 2001.

#### **SUBCHAPTER D. OFFENSES AND PENALTIES**

Sec. 481.101. CRIMINAL CLASSIFICATION. For the purpose of establishing criminal penalties for violations of this chapter, controlled substances, including a material, compound, mixture, or preparation containing the controlled substance, are divided into Penalty Groups 1 through 4.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989.

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;  
Allylprodine;  
Alphacetylmethadol;

Benzethidine;  
Betaprodine;  
Clonitazene;  
Diampromide;  
Diethylthiambutene;  
Difenoxin not listed in Penalty Group 3 or 4;  
Dimenoxadol;  
Dimethylthiambutene;  
Dioxaphetyl butyrate;  
Dipipanone;  
Ethylmethylthiambutene;  
Etonitazene;  
Etoxeridine;  
Furethidine;  
Hydroxypethidine;  
Ketobemidone;  
Levophenacymorphan;  
Meprodine;  
Methadol;  
Moramide;  
Morpheridine;  
Noracymethadol;  
Norlevorphanol;  
Normethadone;  
Norpipanone;  
Phenadoxone;  
Phenampramide;  
Phenomorphane;  
Phenoperidine;  
Piritramide;  
Proheptazine;  
Propoperidine;  
Propiram;  
Sufentanil;  
Tilidine; and  
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;  
 Acetyldihydrocodeine;  
 Benzylmorphine;  
 Codeine methylbromide;  
 Codeine-N-Oxide;  
 Cyprenorphine;  
 Desomorphine;  
 Dihydromorphine;  
 Drotebanol;  
 Etorphine, except hydrochloride salt;  
 Heroin;  
 Hydromorphanol;  
 Methyldesorphine;  
 Methyldihydromorphine;  
 Monoacetylmorphine;  
 Morphine methylbromide;  
 Morphine methylsulfonate;  
 Morphine-N-Oxide;  
 Myrophine;  
 Nicocodeine;  
 Nicomorphine;  
 Normorphine;  
 Pholcodine; and  
 Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate not listed in Penalty Group 3 or 4, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine derived butorphanol, nalmeferne and its salts, naloxone and its salts, and naltrexone and its salts, but including:

Codeine not listed in Penalty Group 3 or 4;  
 Dihydroetorphine;  
 Ethylmorphine not listed in Penalty Group 3 or 4;  
 Granulated opium;  
 Hydrocodone not listed in Penalty Group 3;  
 Hydromorphone;  
 Metopon;  
 Morphine not listed in Penalty Group 3;  
 Opium extracts;

Opium fluid extracts;  
 Oripavine;  
 Oxycodone;  
 Oxymorphone;  
 Powdered opium;  
 Raw opium;  
 Thebaine; and  
 Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves;

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

Alphaprodine;

Anileridine;

Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl;

Bezitramide;

Carfentanil;  
 Dihydrocodeine not listed in Penalty Group 3 or 4;  
 Diphenoxylate not listed in Penalty Group 3 or 4;  
 Fentanyl or alpha-methylfentanyl, or any other  
 derivative of Fentanyl;  
 Isomethadone;  
 Levomethorphan;  
 Levorphanol;  
 Metazocine;  
 Methadone;  
 Methadone-Intermediate, 4-cyano-2-dimethylamino- 4, 4-  
 diphenyl butane;  
 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)- 4-  
 piperidyl]-N-phenylpropanamide);  
 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl) ethyl-4-  
 piperidinyl]-N-phenylpropanamide);  
 Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-  
 diphenyl-propane-carboxylic acid;  
 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-  
 phenylethyl)-4-piperidinylpropanamide);  
 PEPAP (1-(2-phenethyl)-4-phenyl-4- acetoxypiperidine);  
 Pethidine (Meperidine);  
 Pethidine-Intermediate-A, 4-cyano-1-methyl-4-  
 phenylpiperidine;  
 Pethidine-Intermediate-B, ethyl-4- phenylpiperidine-4  
 carboxylate;  
 Pethidine-Intermediate-C, 1-methyl-4- phenylpiperidine-  
 4-carboxylic acid;  
 Phenazocine;  
 Piminodine;  
 Racemethorphan;  
 Racemorphan;  
 Remifentanil; and  
 Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-  
 piperidinyl]-propanamide);  
 (5) Flunitrazepam (trade or other name: Rohypnol);  
 (6) Methamphetamine, including its salts, optical isomers,  
 and salts of optical isomers;  
 (7) Phenylacetone and methylamine, if possessed together  
 with intent to manufacture methamphetamine;

- (8) Phencyclidine, including its salts;
- (9) Gamma hydroxybutyric acid (some trade or other names: gamma hydroxybutyrate, GHB), including its salts; and
- (10) Ketamine.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 761, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 21, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 459, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1099, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 481.1021. PENALTY GROUP 1-A. Penalty Group 1-A consists of lysergic acid diethylamide (LSD), including its salts, isomers, and salts of isomers.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 22, eff. Jan. 1, 1998.

Sec. 481.103. PENALTY GROUP 2. (a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

alpha-ethyltryptamine;

alpha-methyltryptamine;

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

4-bromo-2, 5-dimethoxyphenethylamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

2, 5-dimethoxy-4-ethylamphetamine (trade or other name: DOET);

2, 5-dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7);

Dimethyltryptamine (trade or other name: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9- (trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

Mescaline;

5-methoxy-N, N-diisopropyltryptamine;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha- methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

Nabilone (Another name for nabilone: (+)-trans- 3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6, 6-dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine);

N-ethyl-3-piperidyl benzilate;



N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-pyrrolidine (some trade or other name: TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or other name: TFMPP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P2P, Benzylmethyl ketone, methyl benzyl ketone);

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect

on the central nervous system:

Aminorex (some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone);

Etorphine Hydrochloride;

Fenethylamine and its salts;

Lisdexamfetamine, including its salts, isomers, and salts of isomers;

Mecloqualone and its salts;

Methaqualone and its salts;

Methcathinone (some trade or other names: 2-methylamino-propriophenone; alpha-(methylamino)propriophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropriophenone; monomethylpropion; ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR 1431);

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers; and

(4) any compound structurally derived from 2-aminopropanal by substitution at the 1-position with any monocyclic or fused-polycyclic ring system, including:

(A) compounds further modified by:

(i) substitution in the ring system to any extent (including alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents), whether or not further substituted in the ring system by other substituents;

(ii) substitution at the 3-position with an alkyl substituent; or

(iii) substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure; and

(B) by example, compounds such as:

4-Methylmethcathinone (Also known as Mephedrone);

3,4-Dimethylmethcathinone (Also known as 3,4-DMMC);  
 3-Fluoromethcathinone (Also known as 3-FMC);  
 4-Fluoromethcathinone (Also known as Flephedrone);  
 3,4-Methylenedioxy-N-methylcathinone (Also known as  
 Methylone);  
 3,4-Methylenedioxypyrovalerone (Also known as MDPV);  
 alpha-Pyrrolidinopentiophenone (Also known as alpha-  
 PVP);  
 Naphthylpyrovalerone (Also known as Naphyrone);  
 beta-Keto-N-methylbenzodioxolylpropylamine (Also  
 known as Butylone);  
 beta-Keto-N-methylbenzodioxolylpentanamine (Also  
 known as Pentylone);  
 beta-Keto-Ethylbenzodioxolylbutanamine (Also known  
 as Eutylone); and  
 3,4-methylenedioxy-N-ethylcathinone (Also known as  
 Ethylone).

(b) For the purposes of Subsection (a)(1) only, the term "isomer" includes an optical, position, or geometric isomer.

(c) To the extent Subsection (a)(4) conflicts with this subtitle or another law, the subtitle or other law prevails.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 23, eff. Jan. 1, 1998;  
 Acts 2001, 77th Leg., ch. 251, Sec. 17, eff. Sept. 1, 2001; Acts  
 2003, 78th Leg., ch. 1099, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 2, eff.  
 September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 784 (H.B. 2118), Sec. 1, eff.  
 September 1, 2011.

Sec. 481.1031. PENALTY GROUP 2-A. Penalty Group 2-A consists of any quantity of a synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids, including:

naphthoylindoles structurally derived from 3-(1-naphthoyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole

ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

AM-2201;

JWH-004;

JWH-007;

JWH-009;

JWH-015;

JWH-016;

JWH-018;

JWH-019;

JWH-020;

JWH-046;

JWH-047;

JWH-048;

JWH-049;

JWH-050;

JWH-073;

JWH-076;

JWH-079;

JWH-080;

JWH-081;

JWH-082;

JWH-083;

JWH-093;

JWH-094;

JWH-095;

JWH-096;

JWH-097;

JWH-098;

JWH-099;

JWH-100;

JWH-116;

JWH-122;

JWH-148;

JWH-149;

JWH-153;

JWH-159;

JWH-164;

JWH-165;

JWH-166;

JWH-180;  
JWH-181;  
JWH-182;  
JWH-189;  
JWH-193;  
JWH-198;  
JWH-200;  
JWH-210;  
JWH-211;  
JWH-212;  
JWH-213;  
JWH-234;  
JWH-235;  
JWH-239;  
JWH-240;  
JWH-241;  
JWH-242;  
JWH-258;  
JWH-259;  
JWH-260;  
JWH-262;  
JWH-267;  
JWH-386;  
JWH-387;  
JWH-394;  
JWH-395;  
JWH-397;  
JWH-398;  
JWH-399;  
JWH-400;  
JWH-412;  
JWH-413; and  
JWH-414;

naphthylmethylinrones structurally derived from 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

JWH-175;

JWH-184;  
JWH-185;  
JWH-192;  
JWH-194;  
JWH-195;  
JWH-196;  
JWH-197; and  
JWH-199;

naphthoylpyrroles structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

JWH-030;  
JWH-145;  
JWH-146;  
JWH-147;  
JWH-150;  
JWH-156;  
JWH-243;  
JWH-244;  
JWH-245;  
JWH-246;  
JWH-292;  
JWH-293;  
JWH-307;  
JWH-308;  
JWH-309;  
JWH-346;  
JWH-347;  
JWH-348;  
JWH-363;  
JWH-364;  
JWH-365;  
JWH-366;  
JWH-367;  
JWH-368;  
JWH-369;  
JWH-370;

JWH-371;  
JWH-372;  
JWH-373; and  
JWH-392;

naphthylmethylenes structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

JWH-171;  
JWH-172;  
JWH-173; and  
JWH-176;

phenylacetylindoles structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent, including:

AM-694;  
AM-1241;  
JWH-167;  
JWH-203;  
JWH-204;  
JWH-205;  
JWH-206;  
JWH-208;  
JWH-237;  
JWH-248;  
JWH-249;  
JWH-250;  
JWH-251;  
JWH-252;  
JWH-253;  
JWH-302;  
JWH-303;  
JWH-305;  
JWH-306;  
JWH-311;

JWH-312;  
 JWH-313;  
 JWH-314; and  
 JWH-315;

cyclohexylphenols structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent, including:

CP-55,940;  
 CP-47,497;  
 analogues of CP-47,497, including VII, V, VIII, I, II, III, IV, IX, X, XI, XII, XIII, XV, and XVI;  
 JWH-337;  
 JWH-344;  
 JWH-345; and  
 JWH-405; and

cannabinol derivatives, except where contained in marijuana, including tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, such as:

Nabilone;  
 HU-210;  
 HU-211; and  
 WIN-55,212-2.

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. [331](#)), Sec. 1, eff. September 1, 2011.

Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and  
 Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous



system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise described by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any penalty group;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;

Amobarbital;

Bromazepam;

Camazepam;

Chlordiazepoxide;

Chlorhexadol;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Estazolam;

Ethyl loflazepate;

Fludiazepam;

Flurazepam;

Glutethimide;

Halazepam;

Haloxzolam;

Ketazolam;

Loprazolam;

Lorazepam;

Lormetazepam;

Lysergic acid, including its salts, isomers, and salts of isomers;

Lysergic acid amide, including its salts, isomers, and salts of isomers;

Mebutamate;  
 Medazepam;  
 Methyprylon;  
 Midazolam;  
 Nimetazepam;  
 Nitrazepam;  
 Nordiazepam;  
 Oxazepam;  
 Oxazolam;  
 Pentazocine, its salts, derivatives, or compounds or mixtures thereof;  
 Pentobarbital;  
 Pinazepam;  
 Prazepam;  
 Quazepam;  
 Secobarbital;  
 Sulfondiethylmethane;  
 Sulfonethylmethane;  
 Sulfonmethane;  
 Temazepam;  
 Tetrazepam;  
 Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8,-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrazapon);  
 Triazolam;  
 Zaleplon;  
 Zolpidem; and  
 Zopiclone;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts,

per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;

Chloral betaine;

Chloral hydrate;

Ethchlorvynol;

Ethinamate;

Meprobamate;

Methohexital;

Methylphenobarbital (Mephobarbital);

Paraldehyde;

Petrichloral; and

Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;

Cathine [(+)-norpseudoephedrine];

Chlorphentermine;

Clortermine;

Diethylpropion;

Fencamfamin;

Fenfluramine;

Fenproporex;

Mazindol;

Mefenorex;

Modafinil;

Pemoline (including organometallic complexes and their chelates);

Phendimetrazine;

Phentermine;

Pipradrol;

Sibutramine; and

SPA [(-)-1-dimethylamino-1,2-diphenylethane];

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane);

(9) an anabolic steroid, including any drug or hormonal substance, or any substance that is chemically or pharmacologically

related to testosterone, other than an estrogen, progestin, dehydroepiandrosterone, or corticosteroid, and promotes muscle growth, including the following drugs and substances and any salt, ester, or ether of the following drugs and substances:

Androstanediol;  
 Androstanedione;  
 Androstenediol;  
 Androstenedione;  
 Bolasterone;  
 Boldenone;  
 Calusterone;  
 Clostebol;  
 Dehydrochlormethyltestosterone;  
 Delta-1-dihydrotestosterone;  
 Dihydrotestosterone (4-dihydrotestosterone);  
 Drostanolone;  
 Ethylestrenol;  
 Fluoxymesterone;  
 Formebolone;  
 Furazabol;  
 13beta-ethyl-17beta-hydroxygon-4-en-3-one;  
 4-hydroxytestosterone;  
 4-hydroxy-19-nortestosterone;  
 Mestanolone;  
 Mesterolone;  
 Methandienone;  
 Methandriol;  
 Methenolone;  
 17alpha-methyl-3beta, 17 beta-dihydroxy-5alpha-  
 androstane;  
 17alpha-methyl-3alpha, 17 beta-dihydroxy-5alpha-  
 androstane;  
 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4- ene;  
 17alpha-methyl-4-hydroxynandrolone;  
 Methyldienolone;  
 Methyltestosterone;  
 Methyltrienolone;  
 17alpha-methyl-delta-1-dihydrotestosterone;  
 Mibolerone;  
 Nandrolone;

Norandrostenediol;  
Norandrostenedione;  
Norbolethone;  
Norclostebol;  
Norethandrolone;  
Normethandrolone;  
Oxandrolone;  
Oxymesterone;  
Oxymetholone;  
Stanozolol;  
Stenbolone;  
Testolactone;  
Testosterone;  
Tetrahydrogestrinone; and  
Trenbolone; and

(10) *Salvia divinorum*, unless unharvested and growing in its natural state, meaning all parts of that plant, whether growing or not, the seeds of that plant, an extract from a part of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant, its seeds, or extracts, including Salvinorin A.

(b) Penalty Group 3 does not include a compound, mixture, or preparation containing a stimulant substance listed in Subsection (a)(1) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a stimulant effect on the central nervous system.

(c) Penalty Group 3 does not include a compound, mixture, or preparation containing a depressant substance listed in Subsection (a)(2) or (a)(5) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a depressant effect on the central nervous system.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 24, eff. Jan. 1, 1998;  
Acts 2001, 77th Leg., ch. 251, Sec. 18, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1254 (H.B. 124), Sec. 1, eff. September 1, 2013.

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing any quantity of the narcotic drug Buprenorphine or Butorphanol or a salt of either; and

(3) unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone, a substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 25, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 19, eff. Sept. 1, 2001.

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, and 2 include a controlled substance analogue that:

(1) has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or

(2) is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

Added by Acts 2003, 78th Leg., ch. 1099, Sec. 9, eff. Sept. 1, 2003.

Sec. 481.108. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 36, eff. Sept. 1, 1995.

Sec. 481.111. EXEMPTIONS. (a) The provisions of this chapter relating to the possession and distribution of peyote do not apply to the use of peyote by a member of the Native American Church in bona fide religious ceremonies of the church. However, a person who supplies the substance to the church must register and maintain appropriate records of receipts and disbursements in accordance with rules adopted by the director. An exemption granted to a member of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this chapter relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if the humane society or animal control agency is registered with the Federal Drug Enforcement Administration. The provisions of this chapter relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Subchapter C, who is distributing the substance for that purpose to



a humane society or an animal control agency registered with the Federal Drug Enforcement Administration.

(c) A person does not violate Section 481.113, 481.116, 481.1161, 481.121, or 481.125 if the person possesses or delivers tetrahydrocannabinols or their derivatives, or drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body, for use in a federally approved therapeutic research program.

(d) The provisions of this chapter relating to the possession and distribution of anabolic steroids do not apply to the use of anabolic steroids that are administered to livestock or poultry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(d), eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 2, eff. September 1, 2011.

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled

substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.095, eff. September 1, 2009.

Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and

(4) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 4,000 or more.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.096, eff.

September 1, 2009.

Sec. 481.1122. MANUFACTURE OF SUBSTANCE IN PENALTY GROUP 1: PRESENCE OF CHILD. If it is shown at the punishment phase of a trial for the manufacture of a controlled substance listed in Penalty Group 1 that when the offense was committed a child younger than 18 years of age was present on the premises where the offense was committed:

(1) the punishments specified by Sections 481.112(b) and (c) are increased by one degree;

(2) the minimum term of imprisonment specified by Section 481.112(e) is increased to 15 years and the maximum fine specified by that section is increased to \$150,000; and

(3) the minimum term of imprisonment specified by Section 481.112(f) is increased to 20 years and the maximum fine specified by that section is increased to \$300,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 840 (H.B. 946), Sec. 1, eff. September 1, 2007.

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or

for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.097, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 4, eff. September 1, 2011.

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the first degree, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.098, eff. September 1, 2009.

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.099, eff. September 1, 2009.

Sec. 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 8,000 or more.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.100, eff. September 1, 2009.

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third

degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.101, eff. September 1, 2009.

Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under this section is:

(1) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;

(2) a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3) a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and

(6) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 5, eff. September 1, 2011.

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.



Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.102, eff. September 1, 2009.

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.103, eff. September 1, 2009.

Sec. 481.119. OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION OF MISCELLANEOUS SUBSTANCES. (a) A person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in a schedule by an action of

the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 6, eff. Sept. 1, 2001.

Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(5) a felony of the first degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(6) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is more than 2,000 pounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.104, eff. September 1, 2009.

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except

as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is more than 2,000 pounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.105, eff. September 1, 2009.

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD. (a) A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1) who is a child;

(2) who is enrolled in a public or private primary or secondary school; or

(3) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by Subdivision (1) or (2).

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor was a child when the offense was committed;  
or

(2) the actor:

(A) was younger than 21 years of age when the offense was committed;

(B) delivered only marihuana in an amount equal to or less than one-fourth ounce; and

(C) did not receive remuneration for the delivery.

(c) An offense under this section is a felony of the second degree.

(d) In this section, "child" means a person younger than 18 years of age.

(e) If conduct that is an offense under this section is also an offense under another section of this chapter, the actor may be prosecuted under either section or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 27, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 20, eff. Sept. 1, 2001.

Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING CONTROLLED SUBSTANCE ANALOGUE. (a) It is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue:

(1) was not in any part intended for human consumption;

(2) was a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or

(3) was a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the actor's conduct with respect to the substance is in accord with the exemption.

(b) For the purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355) applies to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 28, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1099, Sec. 10, eff. Sept. 1, 2003.

Sec. 481.124. OFFENSE: POSSESSION OR TRANSPORT OF CERTAIN CHEMICALS WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE. (a) A person commits an offense if, with intent to unlawfully manufacture a controlled substance, the person possesses or transports:

- (1) anhydrous ammonia;
- (2) an immediate precursor; or
- (3) a chemical precursor or an additional chemical substance named as a precursor by the director under Section 481.077(b)(1).

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus, iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three of the following items:

(i) an item of equipment subject to regulation under Section 481.080, if the person is not registered under Section 481.063; or

(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

(c) For purposes of this section, a substance is presumed to be anhydrous ammonia if the substance is in a container or receptacle that is:

(1) designed and manufactured to lawfully hold or transport anhydrous ammonia; or

(2) not designed and manufactured to lawfully hold or transport anhydrous ammonia, if:

(A) a properly administered field test of the substance using a testing device or instrument designed and manufactured for that purpose produces a positive result for anhydrous ammonia; or

(B) a laboratory test of a water solution of the substance produces a positive result for ammonia.

(d) An offense under this section is:

(1) a felony of the second degree if the controlled substance is listed in Penalty Group 1 or 1-A;

(2) a felony of the third degree if the controlled substance is listed in Penalty Group 2;

(3) a state jail felony if the controlled substance is listed in Penalty Group 3 or 4; or

(4) a Class A misdemeanor if the controlled substance is listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(f) This section does not apply to a chemical precursor exempted by the director under Section 481.077(b)(2) from the requirements of that section.

Added by Acts 2001, 77th Leg., ch. 1188, Sec. 7, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 570, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 6, eff. August 1,

2005.

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A person commits an offense if the person:

(1) possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia;

(2) uses, transfers, or sells a container or receptacle that is designed or manufactured to hold anhydrous ammonia without the express consent of the owner of the container or receptacle; or

(3) tampers with equipment that is manufactured or used to hold, apply, or transport anhydrous ammonia without the express consent of the owner of the equipment.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 7, eff. August 1, 2005.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a

controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days.

(f) An offense under Subsection (c) is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Sec. 481.126. OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR INVESTMENT. (a) A person commits an offense if the person:

(1) barter property or expends funds the person knows are derived from the commission of an offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2) barter property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5);

(3) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5).

(b) An offense under Subsection (a)(1) or (3) is a felony of the first degree. An offense under Subsection (a)(2) or (4) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 37, eff. Sept. 1, 1995; Acts



2001, 77th Leg., ch. 251, Sec. 21, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 712, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.106, eff. September 1, 2009.

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the director under Section 481.074(q) or 481.075.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 29, eff. Jan. 1, 1998.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 3, eff. September 1, 2013.

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS.

(a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 481.070-481.075;

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces an official prescription form without the approval of the director;

(5) delivers or possesses a counterfeit official prescription form;

(6) refuses an entry into a premise for an inspection authorized by this chapter;

(7) refuses or fails to return an official prescription

form as required by Section 481.075(k);

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted by the director; or

(9) refuses or fails to maintain security required by this chapter or a rule adopted under this chapter.

(b) If the registrant or dispenser knowingly refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information or maintain security required by a rule adopted by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than \$5,000 for each act.

(c) An offense under Subsection (a) is a state jail felony.

(d) If a person commits an act that would otherwise be an offense under Subsection (a) except that it was committed without the requisite culpable mental state, the person is liable to the state for a civil penalty of not more than \$1,000 for each act.

(e) A district attorney of the county where the act occurred may file suit in district court in that county to collect a civil penalty under this section, or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 30, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 22, eff. Sept. 1, 2001.

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 1, eff. September 1, 2011.

Sec. 481.129. OFFENSE: FRAUD. (a) A person commits an offense if the person knowingly:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance under an order form as required by Section 481.069;

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(3) issues a prescription bearing a forged or fictitious signature;

(4) uses a prescription issued to another person to prescribe a Schedule II controlled substance;

(5) possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form; or

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(6) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by

misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark, imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled

substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule V.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a state jail felony if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(p), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 31, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 23, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 2, eff. September 1, 2011.

Sec. 481.130. PENALTIES UNDER OTHER LAW. A penalty imposed for an offense under this chapter is in addition to any civil or administrative penalty or other sanction imposed by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) A person commits an offense if the person intentionally or knowingly:

(1) converts to the person's own use or benefit a controlled substance property or plant seized under Section 481.152 or 481.153; or

(2) diverts to the unlawful use or benefit of another person a controlled substance property or plant seized under Section 481.152 or 481.153.

(b) An offense under this section is a state jail felony.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 2, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Sec. 481.132. MULTIPLE PROSECUTIONS. (a) In this section, "criminal episode" means the commission of two or more offenses under this chapter under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme, plan, or continuing course of conduct; or

(2) the offenses are the repeated commission of the same or similar offenses.

(b) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode. If a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, not later than the 30th day before the date of the trial, the state shall file written notice of the action.

(c) If a judgment of guilt is reversed, set aside, or vacated and a new trial is ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former

prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecution official at the time the first prosecution began.

(d) If the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which the accused has been found guilty shall be pronounced, and those sentences run concurrently.

(e) If it appears that a defendant or the state is prejudiced by a joinder of offenses, the court may order separate trials of the offenses or provide other relief as justice requires.

(f) This section provides the exclusive method for consolidation and joinder of prosecutions for offenses under this chapter. This section is not a limitation of Article 36.09 or 36.10, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 193, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17a), eff. Nov. 12, 1991.

Sec. 481.133. OFFENSE: FALSIFICATION OF DRUG TEST RESULTS.

(a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use any substance or device designed to falsify drug test results.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver a substance or device designed to falsify drug test results.

(c) In this section, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance or marihuana.

(d) An offense under Subsection (a) is a Class B misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 274, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17b), eff. Nov. 12, 1991.

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Minor" means a person who is younger than 18 years of age.

(2) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

(4) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(5) "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code.

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a public or private youth center, or a playground; or



(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(d) An offense otherwise punishable under Section 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(g) Subsection (f) does not apply to an offense if:

(1) the offense was committed inside a private residence;

and

(2) no minor was present in the private residence at the time the offense was committed.

(h) Punishment that is increased for a conviction for an offense listed under this section may not run concurrently with punishment for a conviction under any other criminal statute.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 260, Sec. 39, eff. May 30, 1995;  
Acts 1995, 74th Leg., ch. 318, Sec. 38, eff. Sept. 1, 1995; Acts  
1997, 75th Leg., ch. 1063, Sec. 9, eff. Sept. 1, 1997; Acts 2003,  
78th Leg., ch. 570, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 1, eff.  
September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 2, eff.  
September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 6, eff.  
September 1, 2011.

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment

is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 3, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.004, eff. September 1, 2005.

Sec. 481.136. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL PRECURSOR. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

- (1) does not hold a chemical precursor transfer permit as required by Section 481.078 at the time of the transaction;
- (2) does not comply with Section 481.077 or 481.0771;
- (3) knowingly makes a false statement in a report or record required by Section 481.077, 481.0771, or 481.078; or
- (4) knowingly violates a rule adopted under Section 481.077, 481.0771, or 481.078.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section or Section 481.137, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.

Amended by Acts 2001, 77th Leg., ch. 251, Sec. 24, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 8, eff. August 1, 2005.

Sec. 481.137. OFFENSE: TRANSFER OF PRECURSOR SUBSTANCE FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical precursor subject to Section 481.077(a) with the knowledge or intent that the recipient will use the chemical precursor to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under this section is a felony of the third

degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.  
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 25, eff. Sept. 1, 2001.

Sec. 481.138. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL LABORATORY APPARATUS. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical laboratory apparatus subject to Section 481.080(a) and the person:

- (1) does not have a chemical laboratory apparatus transfer permit as required by Section 481.081 at the time of the transaction;
- (2) does not comply with Section 481.080;
- (3) knowingly makes a false statement in a report or record required by Section 481.080 or 481.081; or
- (4) knowingly violates a rule adopted under Section 481.080 or 481.081.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.  
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 26, eff. Sept. 1, 2001.

Sec. 481.139. OFFENSE: TRANSFER OF CHEMICAL LABORATORY APPARATUS FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical laboratory apparatus with the knowledge or intent that the recipient will use the apparatus to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under Subsection (a) is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.  
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 27, eff. Sept. 1, 2001.

Sec. 481.140. USE OF CHILD IN COMMISSION OF OFFENSE. (a) If it is shown at the punishment phase of the trial of an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.113, 481.114, 481.120, or 481.122 that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, the punishment is increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

(b) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

Added by Acts 2001, 77th Leg., ch. 786, Sec. 1, eff. June 14, 2001.

Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that a person died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the defendant, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant, the punishment for the offense is increased by one degree.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.113, 481.114, or 481.122.

(c) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

Added by Acts 2003, 78th Leg., ch. 712, Sec. 2, eff. Sept. 1, 2003.

**SUBCHAPTER E. FORFEITURE**

Sec. 481.151. DEFINITIONS. In this subchapter:

(1) "Controlled substance property" means a controlled substance, mixture containing a controlled substance, controlled substance analogue, counterfeit controlled substance, drug paraphernalia, chemical precursor, chemical laboratory apparatus, or raw material.

(2) "Controlled substance plant" means a species of plant from which a controlled substance listed in Schedule I or II may be derived.

(3) "Summary destruction" or "summarily destroy" means destruction without the necessity of any court action, a court order, or further proceedings.

(4) "Summary forfeiture" or "summarily forfeit" means forfeiture without the necessity of any court action, a court order, or further proceedings.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 251, Sec. 28, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. [722](#)), Sec. 1, eff. May 21, 2007.

Sec. 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OF CONTROLLED SUBSTANCE PLANTS. (a) Controlled substance plants are subject to seizure and summary forfeiture to the state if:

(1) the plants have been planted, cultivated, or harvested in violation of this chapter;

(2) the plants are wild growths; or

(3) the owners or cultivators of the plants are unknown.

(b) Subsection (a) does not apply to unharvested peyote growing in its natural state.

(c) If a person who occupies or controls land or premises on which the plants are growing fails on the demand of a peace officer to produce an appropriate registration or proof that the person is the holder of the registration, the officer may seize and summarily forfeit the plants.

(d) If a controlled substance plant is seized and forfeited

under this section, a court may order the disposition of the plant under Section 481.159, or the department or a peace officer may summarily destroy the property under the rules of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 2, eff. May 21, 2007.

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 3, eff. May 21, 2007.

Sec. 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OF CONTROLLED SUBSTANCE PROPERTY. (a) Controlled substance property that is manufactured, delivered, or possessed in violation of this chapter is subject to seizure and summary forfeiture to the state.

(b) If an item of controlled substance property is seized and forfeited under this section, a court may order the disposition of the property under Section 481.159, or the department or a peace officer may summarily destroy the property under the rules of the department.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 4, eff. May 21, 2007.

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 5, eff. May 21, 2007.

Sec. 481.154. RULES. (a) The director may adopt reasonable rules and procedures, not inconsistent with the provisions of this chapter, concerning:

- (1) summary forfeiture and summary destruction of controlled substance property or plants;
- (2) establishment and operation of a secure storage area;
- (3) delegation by a law enforcement agency head of the authority to access a secure storage area; and
- (4) minimum tolerance for and the circumstances of loss or

destruction during an investigation.

(b) The rules for the destruction of controlled substance property or plants must require:

(1) more than one person to witness the destruction of the property or plants;

(2) the preparation of an inventory of the property or plants destroyed; and

(3) the preparation of a statement that contains the names of the persons who witness the destruction and the details of the destruction.

(c) A document prepared under a rule adopted under this section must be completed, retained, and made available for inspection by the director.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 6, eff. May 21, 2007.

Sec. 481.159. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency to:

(1) retain the property or plant for its official purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it for a purpose described by Section 481.065(a); or

(5) destroy the property or plant that is not otherwise disposed of in the manner prescribed by this subchapter.

(b) The district court may not require the department to receive, analyze, or retain a controlled substance property or plant forfeited to a law enforcement agency other than the department.

(c) In order to ensure that a controlled substance property or



plant is not diluted, substituted, diverted, or tampered with while being used in the investigation of offenses under this code, law enforcement agencies using the property or plant for this purpose shall:

(1) employ a qualified individual to conduct qualitative and quantitative analyses of the property or plant before and after their use in an investigation;

(2) maintain the property or plant in a secure storage area accessible only to the law enforcement agency head and the individual responsible for analyzing, preserving, and maintaining security over the property or plant; and

(3) maintain a log documenting:

(A) the date of issue, date of return, type, amount, and concentration of property or plant used in an investigation; and

(B) the signature and the printed or typed name of the peace officer to whom the property or plant was issued and the signature and the printed or typed name of the individual issuing the property or plant.

(d) A law enforcement agency may contract with another law enforcement agency to provide security that complies with Subsection (c) for controlled substance property or plants.

(e) A law enforcement agency may adopt a written policy with more stringent requirements than those required by Subsection (c). The director may enter and inspect, in accordance with Section 481.181, a location at which an agency maintains records or controlled substance property or plants as required by this section.

(f) If a law enforcement agency uses a controlled substance property or plant in the investigation of an offense under this code and the property or plant has been transported across state lines before the forfeiture, the agency shall cooperate with a federal agency in the investigation if requested to do so by the federal agency.

(g) Under the rules of the department, a law enforcement agency head may grant to another person access to a secure storage facility under Subsection (c)(2).

(h) A county, justice, or municipal court may order forfeiture of a controlled substance property or plant, unless the lawful possession of and title to the property or plant can be ascertained. If the court determines that a person had lawful possession of and title to the controlled substance property or plant before it was

seized, the court shall order the controlled substance property or plant returned to the person, if the person so desires. The court may only order the destruction of a controlled substance property or plant that is not otherwise disposed of in the manner prescribed by Section 481.160.

(i) If a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or for any purpose other than investigation, the property or plant may not be used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 5(a), eff. Oct. 18, 1989; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.

Sec. 481.160. DESTRUCTION OF EXCESS QUANTITIES. (a) If a controlled substance property or plant is forfeited under this code or under Chapter 59, Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited may summarily destroy the property or plant without a court order before the disposition of a case arising out of the forfeiture if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of the property or plant and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably depict the total amount of the property or plant; and

(3) the gross weight or liquid measure of the property or plant is determined, either by actually weighing or measuring the property or plant or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) If the property consists of a single container of liquid, taking and preserving one representative sample complies with Subsection (a)(1).

(c) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the

suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed. An inference or presumption of spoliation does not apply to a property or plant destroyed under this section.

(d) If hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations that create a health or environmental hazard or are not capable of being safely stored are forfeited, those items may be disposed of under Subsection (a) or may be seized and summarily forfeited and destroyed by a law enforcement agency without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

(e) A law enforcement agency seizing and destroying or disposing of materials described in Subsection (d) shall ensure that photographs are taken that reasonably depict the total amount of the materials seized and the manner in which the materials were physically arranged or positioned before seizure.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1224, Sec. 19(2), eff. September 1, 2005.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(r), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 199, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 285, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 745, Sec. 33, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 29, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1224 (H.B. 1068), Sec. 19(2), eff. September 1, 2005.

#### **SUBCHAPTER F. INSPECTIONS, EVIDENCE, AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS**

Sec. 481.181. INSPECTIONS. (a) The director may enter controlled premises at any reasonable time and inspect the premises and items described by Subsection (b) in order to inspect, copy, and verify the correctness of a record, report, or other document required to be made or kept under this chapter and to perform other

functions under this chapter. For purposes of this subsection, "reasonable time" means any time during the normal business hours of the person or activity regulated under this chapter or any time an activity regulated under this chapter is occurring on the premises. The director shall:

- (1) state the purpose of the entry;
  - (2) display to the owner, operator, or agent in charge of the premises appropriate credentials; and
  - (3) deliver to the owner, operator, or agent in charge of the premises a written notice of inspection authority.
- (b) The director may:
- (1) inspect and copy a record, report, or other document required to be made or kept under this chapter;
  - (2) inspect, within reasonable limits and in a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished drugs, other substances, and materials, containers, labels, records, files, papers, processes, controls, and facilities as appropriate to verify a record, report, or document required to be kept under this chapter or to administer this chapter;
  - (3) examine and inventory stock of a controlled substance and obtain samples of the controlled substance;
  - (4) examine a hypodermic syringe, needle, pipe, or other instrument, device, contrivance, equipment, control, container, label, or facility relating to a possible violation of this chapter; and
  - (5) examine a material used, intended to be used, or capable of being used to dilute or adulterate a controlled substance.

(c) Unless the owner, operator, or agent in charge of the controlled premises consents in writing, the director may not inspect:

- (1) financial data;
- (2) sales data other than shipment data; or
- (3) pricing data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 11, eff. Sept. 1, 2003.

Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. For the purpose of establishing a delivery under this chapter, proof

of an offer to sell must be corroborated by:

- (1) a person other than the person to whom the offer is made; or
- (2) evidence other than a statement of the person to whom the offer is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 12, eff. Sept. 1, 2003.

Sec. 481.183. EVIDENTIARY RULES RELATING TO DRUG PARAPHERNALIA.

(a) In considering whether an item is drug paraphernalia under this chapter, a court or other authority shall consider, in addition to all other logically relevant factors, and subject to rules of evidence:

- (1) statements by an owner or person in control of the object concerning its use;
- (2) the existence of any residue of a controlled substance on the object;
- (3) direct or circumstantial evidence of the intent of an owner or other person in control of the object to deliver it to a person whom the person knows or should reasonably know intends to use the object to facilitate a violation of this chapter;
- (4) oral or written instructions provided with the object concerning its use;
- (5) descriptive material accompanying the object that explains or depicts its use;
- (6) the manner in which the object is displayed for sale;
- (7) whether the owner or person in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (9) the existence and scope of uses for the object in the community;
- (10) the physical design characteristics of the item; and
- (11) expert testimony concerning the item's use.

(b) The innocence of an owner or other person in charge of an object as to a direct violation of this chapter does not prevent a finding that the object is intended or designed for use as drug

paraphernalia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 13, eff. Sept. 1, 2003.

Sec. 481.184. BURDEN OF PROOF; LIABILITIES. (a) The state is not required to negate an exemption or exception provided by this chapter in a complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. A person claiming the benefit of an exemption or exception has the burden of going forward with the evidence with respect to the exemption or exception.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this chapter.

(c) This chapter does not impose a liability on an authorized state, county, or municipal officer engaged in the lawful performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 14, eff. Sept. 1, 2003.

Sec. 481.185. ARREST REPORTS. (a) Each law enforcement agency in this state shall file monthly with the director a report of all arrests made for drug offenses and quantities of controlled substances seized during the preceding month. The agency shall make the report on a form provided by the director and shall provide the information required by the form.

(b) The director shall publish an annual summary of all drug arrests and controlled substances seized in the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.186. COOPERATIVE ARRANGEMENTS. (a) The director shall cooperate with federal and state agencies in discharging the director's responsibilities concerning traffic in controlled

substances and in suppressing the abuse of controlled substances. The director may:

(1) arrange for the exchange of information among government officials concerning the use and abuse of controlled substances;

(2) cooperate in and coordinate training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the Federal Drug Enforcement Administration and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders in this state and, except as provided by Section 481.068, make the information available for federal, state, and local law enforcement purposes; and

(4) conduct programs of eradication aimed at destroying wild or illegal growth of plant species from which controlled substances may be extracted.

(b) In the exercise of regulatory functions under this chapter, the director may rely on results, information, and evidence relating to the regulatory functions of this chapter received from the Federal Drug Enforcement Administration or a state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 15, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. THERAPEUTIC RESEARCH PROGRAM**

Sec. 481.201. RESEARCH PROGRAM; REVIEW BOARD. (a) The Texas Board of Health may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this chapter.

(b) If the Texas Board of Health establishes the program, the board shall create a research program review board. The review board members are appointed by the Texas Board of Health and serve at the will of the board.

(c) The review board shall be composed of:

(1) a licensed physician certified by the American Board of Ophthalmology;

(2) a licensed physician certified by the American Board of Internal Medicine and certified in the subspecialty of medical oncology;

(3) a licensed physician certified by the American Board of Psychiatry;

(4) a licensed physician certified by the American Board of Surgery;

(5) a licensed physician certified by the American Board of Radiology; and

(6) a licensed attorney with experience in law pertaining to the practice of medicine.

(d) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.202. REVIEW BOARD POWERS AND DUTIES. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the Texas Board of Health, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

(d) The Texas Board of Health may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as it determines necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.203. PATIENT PARTICIPATION. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols



and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician who is licensed by the Texas State Board of Medical Examiners and is attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;

(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED SUBSTANCES. (a) The Texas Board of Health shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations adopted by the institute, the Food and Drug Administration, and the Federal Drug Enforcement Administration.

(b) The Texas Board of Health shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives of tetrahydrocannabinols may be distributed only by the person in charge of the research program to physicians caring for program participant patients, under rules adopted by the Texas Board of Health in such a manner as to prevent unauthorized diversion of the substances and in compliance with all requirements of the Federal Drug Enforcement Administration. The physician is responsible for dispensing the substances to patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.205. RULES; REPORTS. (a) The Texas Board of Health shall adopt rules necessary for implementing the research program.

(b) If the Texas Board of Health establishes a program under this subchapter, the commissioner shall publish a report not later than January 1 of each odd-numbered year on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 481.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates Section 481.061, 481.066, 481.067, 481.069, 481.074, 481.075, 481.077, 481.0771, 481.078, 481.080, or 481.081 or a rule or order adopted under any of those sections.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.302. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$20,000.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person by certified mail, registered mail, personal delivery, or another manner of delivery that records the person's receipt of the notice.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.304. PENALTY TO BE PAID OR INFORMAL HEARING REQUESTED.

(a) Before the 21st day after the date the person receives notice under Section 481.303, the person in writing may:

- (1) accept the determination and recommended penalty; or
- (2) make a request for an informal hearing held by the department on the occurrence of the violation, the amount of the penalty, or both.

(b) At the conclusion of an informal hearing requested under Subsection (a), the department may modify the amount of the recommended penalty.

(c) If the person accepts the determination and recommended penalty, including any modification of the amount, or if the person fails to timely respond to the notice, the director by order shall approve the determination and impose the recommended penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.305. FORMAL HEARING. (a) The person may request a formal hearing only after participating in an informal hearing.

(b) The request must be submitted in writing and received by the department before the 21st day after the date the person is notified of the decision from the informal hearing.

(c) If a timely request for a formal hearing is not received, the director by order shall approve the determination from the

informal hearing and impose the recommended penalty.

(d) If the person timely requests a formal hearing, the director shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the director and to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(e) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision about the occurrence of the violation and the amount of any proposed penalty.

(f) If a penalty is proposed under Subsection (e), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and impose the costs, fees, and expenses on the person as part of the final order entered in the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.306. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may:

- (1) find that a violation occurred and impose a penalty; or
- (2) find that a violation did not occur.

(b) The notice of the director's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 481.306 that imposes an administrative penalty becomes final, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.308. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 481.307, a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) sending a copy of the affidavit to the director by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the director may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.309. COLLECTION OF PENALTY. (a) If the person does

not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.310. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.311. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.312. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond

after the person pays the reduced amount.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.313. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.314. DISPOSITION OF PENALTY. The department shall send any amount collected as a penalty under this subchapter to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

#### **SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP**

Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP. The interagency prescription monitoring work group is created to evaluate the effectiveness of prescription monitoring under this chapter and offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

Sec. 481.352. MEMBERS. The work group is composed of:

- (1) the director or the director's designee;
- (2) the commissioner of state health services or the commissioner's designee;
- (3) the executive director of the Texas State Board of Pharmacy or the executive director's designee;
- (4) the executive director of the Texas Medical Board or

the executive director's designee;

(5) the executive director of the Texas Board of Nursing or the executive director's designee; and

(6) the executive director of the Texas Physician Assistant Board or the executive director's designee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

Sec. 481.353. MEETINGS. (a) The work group shall meet at least quarterly.

(b) The work group is subject to Chapter 551, Government Code.

(c) The work group shall proactively engage stakeholders and solicit and take into account input from the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

Sec. 481.354. REPORT. Not later than December 1 of each even-numbered year, the work group shall submit to the legislature its recommendations relating to prescription monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

## **CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES**

Sec. 482.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Sec. 481.002 (Texas Controlled Substances Act).

(2) "Deliver" means to transfer, actually or constructively, from one person to another a simulated controlled substance, regardless of whether there is an agency relationship. The term includes offering to sell a simulated controlled substance.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that



is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.03, eff. Sept. 1, 1994.

Sec. 482.003. EVIDENTIARY RULES. (a) In determining whether a person has represented a simulated controlled substance to be a controlled substance in a manner that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance; and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

(b) Proof of an offer to sell a simulated controlled substance must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.004. SUMMARY FORFEITURE. A simulated controlled substance seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as is a controlled substance property under Subchapter E, Chapter 481.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 3, eff. Sept. 1, 1991.

Sec. 482.005. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 39, eff. Sept. 1, 1995.

**CHAPTER 483. DANGEROUS DRUGS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 483.0001. SHORT TITLE. This Act may be cited as the Texas Dangerous Drug Act.

Added by Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993.

Sec. 483.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(3) "Deliver" means to sell, dispense, give away, or supply in any other manner.

(4) "Designated agent" means:

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to carry out a prescription drug order for dangerous drugs under Subchapter B, Chapter 157, Occupations Code.

(5) "Dispense" means to prepare, package, compound, or label a dangerous drug in the course of professional practice for delivery under the lawful order of a practitioner to an ultimate user or the user's agent.

(6) "Manufacturer" means a person, other than a pharmacist, who manufactures dangerous drugs. The term includes a person who prepares dangerous drugs in dosage form by mixing, compounding, encapsulating, entableting, or any other process.

(7) "Patient" means:

(A) an individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(B) an owner or the agent of an owner of an animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(8) "Person" includes an individual, corporation, partnership, and association.

(9) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy.

(10) "Pharmacy" means a facility where prescription drug or medication orders are received, processed, dispensed, or distributed under this chapter, Chapter 481 of this code, and Subtitle J, Title 3, Occupations Code. The term does not include a narcotic drug treatment program that is regulated by Chapter 466, Health and Safety Code.

(11) "Practice of pharmacy" means:

(A) provision of those acts or services necessary to provide pharmaceutical care;

(B) interpretation and evaluation of prescription drug orders or medication orders;

(C) participation in drug and device selection as authorized by law, drug administration, drug regimen review, or drug or drug-related research;

(D) provision of patient counseling;

(E) responsibility for:

(i) dispensing of prescription drug orders or distribution of medication orders in the patient's best interest;

(ii) compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged prescription drugs and devices;

(iii) proper and safe storage of drugs and devices;  
or

(iv) maintenance of proper records for drugs and devices. In this subdivision, "device" has the meaning assigned by Subtitle J, Title 3, Occupations Code; or

(F) performance of a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed by the state under Subtitle B, Title 3, Occupations Code.

(12) "Practitioner" means:

(A) a person licensed by the Texas Medical Board, State Board of Dental Examiners, Texas State Board of Podiatric Medical Examiners, Texas Optometry Board, or State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs;

(B) a person licensed by another state in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(C) a person licensed in Canada or Mexico in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(13) "Prescription" means an order from a practitioner, or an agent of the practitioner designated in writing as authorized to communicate prescriptions, or an order made in accordance with Subchapter B, Chapter 157, Occupations Code, or Section 203.353, Occupations Code, to a pharmacist for a dangerous drug to be dispensed that states:

(A) the date of the order's issue;

(B) the name and address of the patient;

(C) if the drug is prescribed for an animal, the species of the animal;

(D) the name and quantity of the drug prescribed;

(E) the directions for the use of the drug;

(F) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(G) the name, address, and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped; and

(H) the name, address, and telephone number of the licensed midwife, registered nurse, or physician assistant, legibly printed or stamped, if signed by a licensed midwife, registered nurse, or physician assistant.

(14) "Warehouseman" means a person who stores dangerous drugs for others and who has no control over the disposition of the drugs except for the purpose of storage.

(15) "Wholesaler" means a person engaged in the business of distributing dangerous drugs to a person listed in Sections 483.041(c)(1)-(6).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(h), 5.04(b), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 200, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 588, Sec. 26, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 351, Sec. 29, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 6, 82, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 18, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1180, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 6, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.795, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 10, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 54, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 24, eff. November 1, 2013.

Sec. 483.002. RULES. The board may adopt rules for the proper administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.003. BOARD OF HEALTH HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Texas Board of Health may hold public hearings in accordance with Chapter 2001, Government Code to determine whether there is compelling evidence that a dangerous drug has been abused, either by being prescribed for nontherapeutic purposes or by the ultimate user.

(b) On making that finding, the Texas Board of Health may limit the availability of the abused drug by permitting its dispensing only on the prescription of a practitioner described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 7, eff. May 11, 2001.

Sec. 483.004. COMMISSIONER OF HEALTH EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the commissioner of health has compelling evidence that an immediate danger to the public health exists as a result of the prescription of a dangerous drug by practitioners described by Section 483.001(12)(C), the commissioner may use the commissioner's existing emergency authority to limit the availability of the drug by permitting its prescription only by practitioners described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 8, eff. May 11, 2001.

#### **SUBCHAPTER B. DUTIES OF PHARMACISTS, PRACTITIONERS, AND OTHER PERSONS**

Sec. 483.021. DETERMINATION BY PHARMACIST ON REQUEST TO DISPENSE DRUG. (a) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a practitioner shall determine, in the exercise of the pharmacist's professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a dangerous drug if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.

(b) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a therapeutic optometrist shall determine, in the exercise of the pharmacist's professional judgment, whether the prescription is for a dangerous drug that a therapeutic optometrist is authorized to prescribe under Section 351.358, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 588, Sec. 27, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1254, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.796, eff. Sept. 1, 2001.

Sec. 483.022. PRACTITIONER'S DESIGNATED AGENT; PRACTITIONER'S RESPONSIBILITIES. (a) A practitioner shall provide in writing the name of each designated agent as defined by Section 483.001(4)(A) and (C), and the name of each healthcare facility which employs persons defined by Section 483.001(4)(B).

(b) The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents or healthcare facilities as defined by Section 483.001(4).

(c) The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a designated agent as defined by Section 483.001(4) on the pharmacist's request.

(d) This section does not relieve a practitioner or the practitioner's designated agent from the requirements of Subchapter A, Chapter 562, Occupations Code.

(e) A practitioner remains personally responsible for the actions of a designated agent who communicates a prescription to a pharmacist.

(f) A practitioner may designate a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse to communicate prescriptions of an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Subchapter B, Chapter 157, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 201, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 789, Sec. 19, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 428, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.797, eff. Sept. 1, 2001.

Sec. 483.023. RETENTION OF PRESCRIPTIONS. A pharmacy shall retain a prescription for a dangerous drug dispensed by the pharmacy for two years after the date of the initial dispensing or the last refilling of the prescription, whichever date is later.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The



following persons shall maintain a record of each acquisition and each disposal of a dangerous drug for two years after the date of the acquisition or disposal:

- (1) a pharmacy;
- (2) a practitioner;
- (3) a person who obtains a dangerous drug for lawful research, teaching, or testing purposes, but not for resale;
- (4) a hospital that obtains a dangerous drug for lawful administration by a practitioner; and
- (5) a manufacturer or wholesaler registered with the commissioner of health under Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.025. INSPECTIONS; INVENTORIES. A person required to keep records relating to dangerous drugs shall:

- (1) make the records available for inspection and copying at all reasonable hours by any public official or employee engaged in enforcing this chapter; and
- (2) allow the official or employee to inventory all stocks of dangerous drugs on hand.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. CRIMINAL PENALTIES**

Sec. 483.041. POSSESSION OF DANGEROUS DRUG. (a) A person commits an offense if the person possesses a dangerous drug unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug for the purpose of selling the drug.

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by the following persons or an agent or employee of the person:

- (1) a pharmacy licensed by the board;

- (2) a practitioner;
  - (3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;
  - (4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;
  - (5) an officer or employee of the federal, state, or local government;
  - (6) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act);
  - (7) a carrier or warehouseman;
  - (8) a home and community support services agency licensed under and acting in accordance with Chapter 142;
  - (9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code;
  - (10) a salvage broker or salvage operator licensed under Chapter 432; or
  - (11) a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with the department and in compliance with department rules for the sole purpose of cosmetic nonablative hair removal.
- (d) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(f), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 16, Sec. 2, eff. April 2, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 20, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 41, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1129, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 9, eff. May 22, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.798, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 55, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 2, eff. September 1, 2010.

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG.

(a) A person commits an offense if the person delivers or offers to deliver a dangerous drug:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B);

(ii) a prescription signed by a registered nurse or physician assistant in accordance with Subchapter B, Chapter 157, Occupations Code; or

(iii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug and, if applicable, the name of the registered nurse or physician assistant who signed the prescription;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by:

(i) a practitioner in the course of practice; or

(ii) a registered nurse or physician assistant in

the course of practice in accordance with Subchapter B, Chapter 157, Occupations Code; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner who prescribed the drug, and if applicable, the name and address of the registered nurse or physician assistant;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.

(d) An offense under this section is a state jail felony.

(e) The labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to a patient who is institutionalized. The board shall adopt rules for the labeling of such a drug.

(f) Provided all federal requirements are met, the labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to food production animals in an agricultural operation under a written medical directive or treatment guideline from a veterinarian licensed under Chapter 801, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(g), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 287, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 21, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.04, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 965, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 24, eff. Sept; 1, 1997; Acts 1999, 76th Leg., ch. 1404,

Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.799, eff. Sept. 1, 2001.

Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG. (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.05, eff. Sept. 1, 1994.

Sec. 483.045. FORGING OR ALTERING PRESCRIPTION. (a) A person commits an offense if the person:

(1) forges a prescription or increases the prescribed quantity of a dangerous drug in a prescription;

(2) issues a prescription bearing a forged or fictitious signature;

(3) obtains or attempts to obtain a dangerous drug by using a forged, fictitious, or altered prescription;

(4) obtains or attempts to obtain a dangerous drug by means of a fictitious or fraudulent telephone call; or

(5) possesses a dangerous drug obtained by a forged, fictitious, or altered prescription or by means of a fictitious or fraudulent telephone call.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.046. FAILURE TO RETAIN PRESCRIPTION. (a) A pharmacist commits an offense if the pharmacist:

(1) delivers a dangerous drug under a prescription; and

(2) fails to retain the prescription as required by Section 483.023.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant

has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.047. REFILLING PRESCRIPTION WITHOUT AUTHORIZATION.

(a) Except as authorized by Subsection (b), a pharmacist commits an offense if the pharmacist refills a prescription unless:

(1) the prescription contains an authorization by the practitioner for the refilling of the prescription, and the pharmacist refills the prescription in the manner provided by the authorization; or

(2) at the time of refilling the prescription, the pharmacist is authorized to do so by the practitioner who issued the prescription.

(b) A pharmacist may exercise his professional judgment in refilling a prescription for a dangerous drug without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(c) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 789, Sec. 22, eff. Sept. 1, 1993.

Sec. 483.048. UNAUTHORIZED COMMUNICATION OF PRESCRIPTION. (a) An agent of a practitioner commits an offense if the agent communicates by telephone a prescription unless the agent is designated in writing under Section 483.022 as authorized by the practitioner to communicate prescriptions by telephone.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.049. FAILURE TO MAINTAIN RECORDS. (a) A person commits an offense if the person is required to maintain a record under Section 483.023 or 483.024 and the person fails to maintain the record in the manner required by those sections.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.050. REFUSAL TO PERMIT INSPECTION. (a) A person commits an offense if the person is required to permit an inspection authorized by Section 483.025 and fails to permit the inspection in the manner required by that section.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.051. USING OR REVEALING TRADE SECRET. (a) A person

commits an offense if the person uses for the person's advantage or reveals to another person, other than to an officer or employee of the board or to a court in a judicial proceeding relevant to this chapter, information relating to dangerous drugs required to be kept under this chapter, if that information concerns a method or process subject to protection as a trade secret.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.052. VIOLATION OF OTHER PROVISION. (a) A person commits an offense if the person violates a provision of this chapter other than a provision for which a specific offense is otherwise described by this chapter.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.053. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 40, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. CRIMINAL AND CIVIL PROCEDURE**

Sec. 483.071. EXCEPTIONS; BURDEN OF PROOF. (a) In a complaint, information, indictment, or other action or proceeding brought for the enforcement of this chapter, the state is not required to negate an exception, excuse, proviso, or exemption contained in this chapter.

(b) The defendant has the burden of proving the exception, excuse, proviso, or exemption.



Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.072. UNCORROBORATED TESTIMONY. A conviction under this chapter may be obtained on the uncorroborated testimony of a party to the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.073. SEARCH WARRANT. A peace officer may apply for a search warrant to search for dangerous drugs possessed in violation of this chapter. The peace officer must apply for and execute the search warrant in the manner prescribed by the Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.074. SEIZURE AND DESTRUCTION. (a) A dangerous drug that is manufactured, sold, or possessed in violation of this chapter is contraband and may be seized by an employee of the board or by a peace officer authorized to enforce this chapter and charged with that duty.

(b) If a dangerous drug is seized under Subsection (a), the board may direct an employee of the board or an authorized peace officer to destroy the drug. The employee or authorized peace officer directed to destroy the drug must act in the presence of another employee of the board or authorized peace officer and shall destroy the drug in any manner designated as appropriate by the board.

(c) Before the dangerous drug is destroyed, an inventory of the drug must be prepared. The inventory must be accompanied by a statement that the dangerous drug is being destroyed at the direction of the board, by an employee of the board or an authorized peace officer, and in the presence of another employee of the board or authorized peace officer. The statement must also contain the names of the persons in attendance at the time of destruction, state the capacity in which each of those persons acts, be signed by those persons, and be sworn to by those persons that the statement is correct. The statement shall be filed with the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 237, Sec. 12, eff. Sept. 1, 1991.

Sec. 483.075. INJUNCTION. The board may institute an action in its own name to enjoin a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.076. LEGAL REPRESENTATION OF BOARD. (a) If the board institutes a legal proceeding under this chapter, the board may be represented only by a county attorney, a district attorney, or the attorney general.

(b) The board may not employ private counsel in any legal proceeding instituted by or against the board under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 485. ABUSABLE VOLATILE CHEMICALS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 485.001. DEFINITIONS. In this chapter:

(1) "Abusable volatile chemical" means:

(A) a chemical, including aerosol paint, that:

(i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;

(ii) when inhaled, ingested, or otherwise introduced into a person's body, may:

(a) affect the person's central nervous system;

(b) create or induce in the person a condition of intoxication, hallucination, or elation; or

(c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and

(iii) is not:

(a) a pesticide subject to Chapter 76,

Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(b) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(c) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended; or

(B) nitrous oxide that is not:

(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

(2) "Aerosol paint" means an aerosolized paint product, including a clear or pigmented lacquer or finish.

(3) "Board" means the Texas Board of Health.

(4) "Commissioner" means the commissioner of health.

(5) "Deliver" means to make the actual or constructive transfer from one person to another of an abusable volatile chemical, regardless of whether there is an agency relationship. The term includes an offer to sell an abusable volatile chemical.

(6) "Delivery" means the act of delivering.

(7) "Department" means the Texas Department of Health.

(8) "Inhalant paraphernalia" means equipment or materials of any kind that are intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable volatile chemical. The term includes a tube, balloon, bag, fabric, bottle, or other container used to concentrate or hold in suspension an abusable volatile chemical or vapors of the chemical.

(9) "Sell" includes a conveyance, exchange, barter, or trade.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.002. RULES. The board may adopt rules necessary to

comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

#### **SUBCHAPTER B. SALES PERMITS AND SIGNS**

Sec. 485.011. PERMIT REQUIRED. A person may not sell an abusable volatile chemical at retail unless the person or the person's employer holds, at the time of the sale, a volatile chemical sales permit for the location of the sale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 485.012 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.012. ISSUANCE AND RENEWAL OF PERMIT. (a) To be eligible for the issuance or renewal of a volatile chemical sales permit, a person must:

- (1) hold a sales tax permit that has been issued to the person;
- (2) complete and return to the department an application as required by the department; and
- (3) pay to the department the application fee established under Section 485.013 for each location at which an abusable volatile chemical may be sold by the person holding a volatile chemical sales permit.

(b) The board shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(c) The department shall issue or deny a permit and notify the applicant of the department's action not later than the 60th day after the date on which the department receives the complete application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit issued or renewed under this chapter is valid for

one year from the date of issuance or renewal.

(e) A permit is not valid if the permit holder has been convicted more than once in the preceding year of an offense committed:

- (1) at a location for which the permit is issued; and
- (2) under Section 485.031, 485.032, or 485.033.

(f) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(g) The department shall prepare an annual roster of permit holders.

(h) The department shall monitor and enforce compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 203, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.013 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.013. FEE. The board by rule may establish fees in amounts not to exceed \$25 for the issuance of a permit under this chapter.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION. A permit holder must have the volatile chemical sales permit or a copy of the permit available for inspection by the public at each location where the permit holder sells an abusable volatile chemical.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT. A proceeding for the failure to issue or renew a volatile chemical sales permit under Section 485.012 or for an appeal from that proceeding is governed by the contested case provisions of Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. (a) The department shall account for all amounts received under Section 485.013 and send those amounts to the comptroller.

(b) The comptroller shall deposit the amounts received under Subsection (a) in the state treasury to the credit of the general revenue fund to be used only by the department to:

- (1) administer, monitor, and enforce this chapter; and
- (2) finance statewide education projects concerning the hazards of abusable volatile chemicals and the prevention of inhalant abuse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 204, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.017. SIGNS. A business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, that states the following:

It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of age. Except in limited situations, such an offense is a state jail felony.

It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A political subdivision or an agency of this state may not enact an ordinance or

rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

(b) This section does not apply to an ordinance or rule that was enacted before September 1, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 205, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 28, eff. September 1, 2009.

Sec. 485.019. RESTRICTION OF ACCESS TO AEROSOL PAINT. (a) A business establishment that holds a permit under Section 485.012 and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of \$50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of \$100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the

injunction is liable to the state for a civil penalty of \$100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The district or county attorney for the county in which a violation of this section is alleged to have occurred, or the attorney general, if requested by the district or county attorney for that county, may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 4, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

#### **SUBCHAPTER C. CRIMINAL PENALTIES**

Sec. 485.031. POSSESSION AND USE. (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable volatile chemical with intent to inhale, ingest, apply, or use the chemical in a manner:

(1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the chemical; and

(2) designed to:

(A) affect the person's central nervous system;

(B) create or induce a condition of intoxication, hallucination, or elation; or

(C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.



Sec. 485.032. DELIVERY TO A MINOR. (a) A person commits an offense if the person knowingly delivers an abusable volatile chemical to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that:

(1) the abusable volatile chemical that was delivered contains additive material that effectively discourages intentional abuse by inhalation; or

(2) the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or regulations subsequently adopted under that Act.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable volatile chemical only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the chemical from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable volatile chemical was delivered presented to the defendant an apparently valid Texas driver's license or an identification certificate, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a state jail felony.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer held a volatile chemical sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not hold a volatile chemical sales permit but did

hold a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.06, eff. Sept. 1, 1994. Renumbered from Health & Safety Code Sec. 485.033 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.033. INHALANT PARAPHERNALIA. (a) A person commits an offense if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable volatile chemical in violation of Section 485.031.

(b) A person commits an offense if the person:

(1) knowingly:

(A) delivers or sells inhalant paraphernalia;

(B) possesses, with intent to deliver or sell, inhalant paraphernalia; or

(C) manufactures, with intent to deliver or sell, inhalant paraphernalia; and

(2) at the time of the act described by Subdivision (1), knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a volatile chemical in violation of Section 485.031.

(c) An offense under Subsection (a) is a Class B misdemeanor, and an offense under Subsection (b) is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 206, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.034 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.034. FAILURE TO POST SIGN. (a) A person commits an offense if the person sells an abusable volatile chemical in a business establishment and the person does not display the sign required by Section 485.017.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 485.035 and amended by Acts  
2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.035. SALE WITHOUT PERMIT. (a) A person commits an offense if the person sells an abusable volatile chemical in violation of Section 485.011 and the purchaser is 18 years of age or older.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 485.036 and amended by Acts  
2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.036. PROOF OF OFFER TO SELL. Proof of an offer to sell an abusable volatile chemical must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 485.037 and amended by Acts  
2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.037. SUMMARY FORFEITURE. An abusable volatile chemical or inhalant paraphernalia seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as controlled substance property under Subchapter E, Chapter 481.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 5, eff. Sept. 1, 1991.  
Renumbered from Health & Safety Code Sec. 485.038 and amended by Acts  
2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.038. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 43, eff. Sept. 1, 1995.

Renumbered from Health & Safety Code Sec. 485.039 by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

#### **SUBCHAPTER D. ADMINISTRATIVE PENALTY**

Sec. 485.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person who sells abusable glue or aerosol paint at retail who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 485.103, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner by order shall approve the determination and impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.105. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

(1) find that a violation occurred and impose a penalty;  
or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the commissioner under Section 485.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 485.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty  
by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner by certified mail.

(b) If the commissioner receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced

or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

**CHAPTER 486. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE,  
AND NORPSEUDOEPHEDRINE**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 486.001. DEFINITIONS. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Council" means the State Health Services Council.



(3) "Department" means the Department of State Health Services.

(4) "Ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(5) "Sale" includes a conveyance, exchange, barter, or trade.

(6) "Real-time electronic logging system" means a system intended to be used by law enforcement agencies and pharmacies or other business establishments that:

(A) is installed, operated, and maintained free of any one-time or recurring charge to the business establishment or to the state;

(B) is able to communicate in real time with similar systems operated in other states and similar systems containing information submitted by more than one state;

(C) complies with the security policy of the Criminal Justice Information Services division of the Federal Bureau of Investigation;

(D) complies with information exchange standards adopted by the National Information Exchange Model;

(E) uses a mechanism to prevent the completion of a sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that would violate state or federal law regarding the purchase of a product containing those substances; and

(F) is equipped with an override of the mechanism described in Paragraph (E) that:

(i) may be activated by an employee of a business establishment; and

(ii) creates a record of each activation of the override.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 1, eff. September 1, 2011.

Sec. 486.002. APPLICABILITY. This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.003. RULES. The council shall adopt rules necessary to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.004. FEES. (a) The department shall collect fees for:

(1) the issuance of a certificate of authority under this chapter; and

(2) an inspection performed in enforcing this chapter and rules adopted under this chapter.

(b) The commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing applications for the issuance of a certificate of authority under this chapter;

(2) issuing certificates of authority under this chapter;

(3) inspecting and auditing a business establishment that is issued a certificate of authority under this chapter; and

(4) otherwise implementing enforcing this chapter.

(c) Fees collected under this section shall be deposited to the credit of a special account in the general revenue fund and appropriated to the department to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.005. STATEWIDE APPLICATION AND UNIFORMITY. (a) To ensure uniform and equitable implementation and enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(b) This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(c) This section does not preclude a political subdivision from imposing administrative sanctions on the holder of a business or professional license or permit issued by the political subdivision who engages in conduct that violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

#### **SUBCHAPTER B. OVER-THE-COUNTER SALES**

Sec. 486.011. SALES BY PHARMACIES. A business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.012. SALES BY ESTABLISHMENTS OTHER THAN PHARMACIES; CERTIFICATE OF AUTHORITY. (a) A business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, or norpseudoephedrine only if the establishment holds a certificate of authority issued under this section.

(b) The department may issue a certificate of authority to engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine to a business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy if the establishment:

(1) applies to the department for the certificate in accordance with department rule; and

(2) complies with the requirements established by the department for issuance of a certificate.

(c) The department by rule shall establish requirements for the issuance of a certificate of authority under this section. The rules must include a consideration by the department of whether the establishment:

(1) complies with the requirements of the Texas State Board of Pharmacy for the issuance of a license to operate a pharmacy;

(2) sells a wide variety of healthcare products; and

(3) employs sales techniques and other measures designed to deter the theft of products containing ephedrine, pseudoephedrine, or norpseudoephedrine and other items used in the manufacture of methamphetamine.

(d) The department may inspect or audit a business establishment that is issued a certificate of authority under this section at any time the department determines necessary.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.013. RESTRICTION OF ACCESS TO EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. A business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine shall:

(1) if the establishment operates a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind the pharmacy counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a pharmacy counter staffed by an employee of the establishment; or

(2) if the establishment does not operate a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind a sales counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a sales counter continuously staffed by an employee of the establishment.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.014. PREREQUISITES TO AND RESTRICTIONS ON SALE. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of government-issued identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) sign for the purchase;

(2) make a record of the sale, including the name and date of birth of the person making the purchase, the address of the purchaser, the date and time of the purchase, the type of identification displayed by the person and the identification number, and the item and number of grams purchased; and

(3) transmit the record of sale as required by Section 486.0141.

(b) A business establishment may not sell to a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine:

(1) within any calendar day, more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances; and

(2) within any 30-day period, more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 2, eff. September 1, 2011.

Sec. 486.0141. TRANSMISSION OF SALES INFORMATION TO REAL-TIME ELECTRONIC LOGGING SYSTEM. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or

norpseudoephedrine, a business establishment that engages in those sales shall transmit the information in the record made under Section 486.014(a)(2) to a real-time electronic logging system.

(b) Except as provided by Subsection (c), a business establishment may not complete an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine if the real-time electronic logging system returns a report that the completion of the sale would result in the person obtaining an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the amount described by Section 486.014(b), regardless of whether all or some of the products previously obtained by the buyer were sold at the establishment or another business establishment.

(c) An employee of a business establishment may complete a sale prohibited by Subsection (b) by using the override mechanism described by Section 486.001(a)(6)(F) only if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain ephedrine, pseudoephedrine, or norpseudoephedrine.

(d) On request of the Department of Public Safety, the administrators of a real-time electronic logging system shall make available to the department a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that is submitted by a business establishment located in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0142. TEMPORARY EXEMPTION. (a) On application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by Section 486.011, the State Board of Pharmacy may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(b) On application by a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine in accordance with a

certificate of authority issued under Section 486.012, the department may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(c) A business establishment granted a temporary exemption under this section must keep records of sales in the same manner required under Section 486.0143 for a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system.

(d) An exemption granted under this section does not relieve a business establishment of any duty under this chapter other than the duty to use a real-time electronic logging system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. [1137](#)), Sec. 3, eff. September 1, 2011.

Sec. 486.0143. WRITTEN LOG OR OTHER ELECTRONIC RECORDKEEPING. If a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine experiences a mechanical or electronic failure of the real-time electronic logging system, the business shall:

(1) maintain a written record or an electronic record made by any means that satisfies the requirements of Section 486.014(a)(2); and

(2) enter the information in the real-time electronic logging system as soon as practicable after the system becomes operational.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. [1137](#)), Sec. 3, eff. September 1, 2011.

Sec. 486.0144. ONLINE PORTAL. The administrators of a real-time electronic logging system shall provide real-time access to the information in the system to the Department of Public Safety if the department executes a memorandum of understanding with the administrators.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. [1137](#)), Sec. 3, eff. September 1, 2011.

Sec. 486.0145. LIMITATION ON CIVIL LIABILITY. A person is not liable for an act done or omission made in compliance with the requirements of Section 486.014 or 486.0141.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0146. PRIVACY PROTECTIONS. (a) The privacy protections provided an individual under 21 C.F.R. Section 1314.45 apply to information entered or stored in a real-time electronic logging system.

(b) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may disclose information entered or stored in a real-time electronic logging system only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

(c) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may not use information entered or stored in a real-time electronic logging system for any purpose other than for a disclosure authorized by Subsection (b) or to comply with the requirements of this chapter.

(d) Notwithstanding Subsection (c), a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine or an employee or agent of the business establishment is not civilly liable for the release of information entered or stored in a real-time electronic logging system unless the release constitutes negligence, recklessness, or wilful misconduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.015. MAINTENANCE OF RECORDS. (a) Except as provided by Subsection (b), a business establishment shall maintain each record made under Section 486.014(a)(2) until at least the second



anniversary of the date the record is made and shall make each record available on request by the department or any local, state, or federal law enforcement agency, including the United States Drug Enforcement Administration.

(b) Subsection (a) does not apply to a business establishment that has used a real-time electronic logging system for longer than two years.

(c) A business establishment that has used a real-time electronic logging system for longer than two years shall destroy all paper records maintained under this section unless the destruction is otherwise prohibited by law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 4, eff. September 1, 2011.

#### **SUBCHAPTER C. ADMINISTRATIVE PENALTY**

Sec. 486.021. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.022. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$20,000.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to

correct the violation; and

- (6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 486.023, the person in writing may:

- (1) accept the determination and recommended penalty; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner by order shall approve the determination.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.025. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

- (1) find that a violation occurred and impose a penalty; or
- (2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 486.026 that imposes an administrative penalty becomes final, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for

placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.029. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.030. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.032. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty under this subchapter is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

#### **SUBTITLE D. HAZARDOUS SUBSTANCES**

**CHAPTER 501. HAZARDOUS SUBSTANCES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 501.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commerce" includes the operation of a business or service establishment and other commerce in this state that is subject to the jurisdiction of this state.
- (3) "Commissioner" means the commissioner of public health.
- (4) "Department" means the Texas Department of Health.
- (5) "Label" means a display of written, printed, or other graphic matter:
  - (A) on the immediate container, excluding the package liner, of any substance; or
  - (B) directly on the article or on a tag or other suitable material affixed to the article, if the article is unpackaged or not packaged in an immediate container intended or suitable for delivery to the ultimate consumer.
- (6) "Misbranded hazardous substance" means either of the following that is not properly packaged or does not bear a proper label required by this chapter:
  - (A) a hazardous substance; or
  - (B) a toy or other article intended for use by children that bears or contains a hazardous substance in a manner that is accessible by a child to whom the toy or other article is entrusted, intended, or packaged in a form suitable for use in a household or by children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 1, eff. Sept. 1, 2001.

Sec. 501.002. HAZARDOUS SUBSTANCE DESCRIBED. (a) A hazardous substance is:

- (1) a substance or mixture of substances that is toxic, corrosive, extremely flammable, flammable, combustible, an irritant, or a strong sensitizer, or that generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably

foreseeable ingestion by children;

(2) a toy or other article, other than clothing, that is intended for use by a child and that presents an electrical, mechanical, or thermal hazard; or

(3) a radioactive substance designated as a hazardous substance under Section 501.003.

(b) A substance is corrosive if, when in contact with living tissue, it causes destruction of that tissue by chemical action. A chemical action on an inanimate surface is not corrosive for the purpose of this section.

(c) An article is an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it may cause, because of its design or manufacture, personal injury or illness by electric shock.

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule of the board. The board shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(e) A substance is an irritant if it is noncorrosive and if, on immediate, prolonged, or repeated contact with normal living tissue, it induces a local inflammatory reaction.

(f) An article is a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article or a part or accessory of the article;

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the

article;

(7) because the article or a part or accessory of the article may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

(g) A substance is radioactive if it emits ionizing radiation.

(h) A substance is a strong sensitizer if, when on normal living tissue, it causes, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substance.

(i) An article is a thermal hazard if, in normal use or when subject to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness because of heat, including heat from heated parts, substances, or surfaces.

(j) A substance is toxic if it is capable of producing personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface and it is not radioactive.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 135 et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the Atomic Energy Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 2, eff. Sept. 1, 2001.



Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The board by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the board finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.004. DESIGNATION OF STRONG SENSITIZER. Before designating a substance as a strong sensitizer, the department must determine that the substance has a significant potential for causing hypersensitivity considering the frequency of occurrence and the severity of the reaction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.005. EXCLUSION. This chapter does not apply to the manufacture, distribution, sale, or use of diapers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. REGULATION OF SUBSTANCES**

Sec. 501.021. FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. (a) The board by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the board finds are generally applicable to those materials or containers.

(b) The board by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the board adopts standards, the flammability standards for articles described by

Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of September 1, 2001.

(c) The department may obtain samples of articles described by Subsection (a) and determine the flammability of the articles for compliance with applicable standards established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 3, eff. Sept. 1, 2001.

Sec. 501.022. DESIGNATION OF BANNED HAZARDOUS SUBSTANCES. (a) The board by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the board. The board's determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The board by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The board by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The board by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an

electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the board gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

(f) This section does not apply to the manufacture, sale, distribution, or use of fireworks of any class.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 4, eff. Sept. 1, 2001.

Sec. 501.023. GENERAL LABELING AND PACKAGING REQUIREMENTS. (a) The department shall ensure that each hazardous substance is labeled sufficiently to inform its user of the dangers involved in using, storing, or handling the substance, of actions to be taken or avoided, and to give instructions as necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) A statement required by Subsection (a) must be located prominently and written in English in conspicuous and legible type that contrasts in typography, layout, or color with other printed matter on the label. The department may also require the statement to be written in Spanish.

(c) The statement must also appear:

(1) on the outside container or wrapper of a substance and on a container sold separately and intended for the storage of a hazardous substance unless the statement required by Subsection (a) is easily legible through the outside container or wrapper; and

(2) on all accompanying literature containing directions for use, whether written or in other form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 5, eff. Sept. 1, 2001.

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a) Toys or games intended for use by children, including the parts of those toys or games, shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent

with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the board adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the board adopts rules under this subsection, latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS.

(a) Art materials shall be reviewed by a toxicologist.

(b) Art materials shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent with the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Until the board adopts rules under this subsection, art materials shall be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Hazardous substances shall be packaged in the manner required by special packaging rules adopted by the board. The board's rules under this section shall be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act

of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Until the board adopts rules under this section, hazardous substances shall be packaged in the manner required by federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.024. REGISTRATION. (a) A person who manufactures, imports, or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state under the person's private brand name shall have on file with the department a registration statement as provided by this section.

(b) The board by rule shall detail the registration requirements and prescribe the contents of the registration statement.

(c) The person must file the registration statement with the department:

(1) before beginning business in this state as a manufacturer, importer, repacker, or distributor of a hazardous substance; and

(2) in each succeeding year that the person continues the business in this state, not later than the anniversary of the initial filing.

(d) The initial registration statement and each annual registration statement must be accompanied by a fee prescribed by the board.

(e) The department, after notice and hearing, may refuse to register or may cancel, revoke, or suspend the registration of a person who manufactures, imports, repacks, or distributes a hazardous substance if the person fails to comply with the requirements of this chapter.

(f) A hazardous substance is subject to seizure and disposition under Section 501.033 if the person who manufactures, imports, repacks, or distributes the hazardous substance does not, after notice by the department, register with the department and make timely payment of the fee under this section.

(g) This section does not apply to a retailer who distributes a hazardous substance to the general public unless the retailer

distributes a hazardous substance made to its specifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 7, eff. Sept. 1, 2001.

Sec. 501.025. RULES. The board may adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended, as applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 8, eff. Sept. 1, 2001.

Sec. 501.026. FEES. The board by rule shall set reasonable registration fees in an amount designed to recover not more than the costs to the department of administering, monitoring compliance with, enforcing, and conducting tests under this chapter.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 9, eff. Sept. 1, 2001.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 501.031. EXAMINATIONS AND INVESTIGATIONS. (a) To enforce this chapter, an officer, employee, or agent of the department, on the presentation of appropriate credentials to the owner, operator, or agent, at reasonable times may enter a factory, warehouse, or establishment in which a hazardous substance is manufactured, processed, packaged, or held for introduction into commerce in this state or in which a hazardous substance is held after introduction into commerce, or a vehicle used to transport or hold a hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling in the factory, warehouse,

establishment, or vehicle.

(b) The officer, employee, or agent of the department may obtain samples of any materials, packaging, labeling, or finished product.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 10, eff. Sept. 1, 2001.

Sec. 501.032. RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE. (a) For the enforcement of this chapter, a carrier engaged in commerce, a person receiving a hazardous substance in commerce, or a person holding a hazardous substance received in commerce, on request of the department shall permit a representative of the department at reasonable times to have access to and to copy all records showing the movement in commerce or the holding after movement in commerce of any hazardous substance and the quantity, consignees, and shipper of the hazardous substance.

(b) Evidence obtained under this section may not be used in the criminal prosecution of the person from whom the evidence is obtained.

(c) A carrier is not subject to the other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a hazardous substance in the usual course of the carrier's business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.033. SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE. (a) If an authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected to be a banned or misbranded hazardous substance and that the article has been detained, and warning all persons not to remove the article from the premises or dispose of the article by sale or in any other manner until permission to do so is given by the agent or a court.

(b) The department shall petition a district court of Travis County or of the county in which the article is located to authorize

the destruction of the article. If the court determines that the article is a banned or misbranded hazardous substance, the department shall destroy the article, and the court shall impose all court costs and fees and storage and other proper expenses against the claimant of the article. However, if the court finds that misbranding occurred in good faith and can be corrected by proper labeling, the court may direct that the article be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article is not a banned or misbranded hazardous substance, the court shall order the department to remove the tags or other markings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 11, eff. Sept. 1, 2001.

Sec. 501.034. PROHIBITED ACTS. (a) A person may not hold or offer for sale, sell, or introduce or deliver for introduction into commerce a misbranded hazardous substance or banned hazardous substance.

(b) A person may not alter, mutilate, destroy, or remove all or part of the label of a hazardous substance, or do any other act relating to a hazardous substance, when the substance is in commerce or is held for sale, whether or not the first sale, after shipment in commerce, if the act results in the hazardous substance being a banned or misbranded hazardous substance.

(c) A person may not receive a banned or misbranded hazardous substance in commerce or deliver or offer to deliver a banned or misbranded hazardous substance for pay or otherwise.

(d) A person may not fail to permit entry or inspection as authorized by this chapter or to provide records as required by this chapter.

(e) A person may not use to his own advantage or reveal to any person other than the department or a court, if relevant to a judicial proceeding under this chapter, information acquired in an inspection authorized by this chapter and relating to a method or process that is entitled to protection as a trade secret.

(f) A person may not remove or dispose of a detained article or substance in violation of Section 501.035.

(g) A person may not manufacture, import, or repack a hazardous



substance that is to be distributed in this state or otherwise distribute a hazardous substance in this state without complying with Section 501.024.

(h) A person may not package a hazardous substance in a new or reused food, drug, or cosmetic container that is identifiable as a food, drug, or cosmetic container by its labeling or other identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 12, eff. Sept. 1, 2001.

Sec. 501.035. OFFENSES; EXCEPTIONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) This section does not apply to a person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith and if the person subsequently delivers on request:

(1) the name and address of the person from whom the substance was purchased or received; and

(2) copies of all documents, if any, relating to the original delivery of the substance to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 13, eff. Sept. 1, 2001.

Sec. 501.036. INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or city attorney of the county or municipality in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation or an order directing compliance; or

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person has engaged in, is engaging in, or is about to engage in a violation of this chapter or a rule adopted or order issued under this chapter.

(b) Venue for a suit brought under this section is in the county or municipality in which the violation occurred or in Travis County.

(c) The commissioner and either the attorney general or the district, county, or city attorney, as appropriate, may each recover from the violator reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Expenses recovered by the commissioner may be appropriated only to the department to administer and enforce this chapter. Expenses recovered by the attorney general may be appropriated only to the attorney general.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

Sec. 501.037. RECALL ORDERS. (a) In conjunction with the detention of an article under Section 501.033, the commissioner may order that a hazardous substance be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the commissioner or an authorized agent of the commissioner.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 501.033.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner; or

(3) is reversed by a court in an order denying destruction under Section 501.033.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent does not implement the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring

an action in a district court of Travis County to recover costs of the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, and court costs related to the recall together with interest on those costs from the time an expense was incurred through the date the department is reimbursed.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

#### **SUBCHAPTER D. ADMINISTRATIVE PENALTY**

Sec. 501.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person:

(1) who manufactures or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state; and

(2) who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 501.103, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.105. HEARING. (a) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact

and conclusions of law and promptly issue to the commissioner of public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty;  
or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date an order of the commissioner of public health under Section 501.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 501.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an

escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health by certified mail.

(b) If the commissioner of public health receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation

occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

**CHAPTER 502. HAZARD COMMUNICATION ACT**

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Hazard Communication Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons working in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals; and

(2) many employers in this state have established suitable information programs for their employees and that access to the information is required of most employers under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard.

(b) It is the intent and purpose of this chapter to assure that employers provide information regarding hazardous chemicals in the workplace to employees who may be exposed to those chemicals in their workplace.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.0021. FEDERAL LAWS AND REGULATIONS. In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.003. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:  
(A) that is formed to a specific shape or design during manufacture;



(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) "Board" means the Texas Board of Health.

(3) "Chemical manufacturer" means an employer in Standard Industrial Classification (SIC) Codes 20-39 with a workplace where chemicals are produced for use or distribution.

(4) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(5) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(6) "Department" means the Texas Department of Health.

(7) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter, except that a recognized or certified collective bargaining agent is a designated representative regardless of written employee authorization.

(8) "Director" means the director of the Texas Department of Health.

(9) "Distributor" means a business in Standard Industrial Classification Major Industry Group 516 or 517 that supplies hazardous chemicals to an employer who must comply with this Act.

(10) "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies, and includes a person working for this state, a person working for a political subdivision of this state, or a member of a volunteer emergency service organization or, if the applicable OSHA standard or MSHA standard is not in effect, a person working for a private employer. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of this chapter.

(11) "Employer" means a person engaged in private business

who is regulated by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164) on the effective date of this Act, or the state or a political subdivision of the state, including a state, county, or municipal agency, a public school, a college or university, a river authority or publicly owned utility, a volunteer emergency service organization, and other similar employers. The term does not include any person to whom the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164) is applicable if that employer is covered by the OSHA standard or the other two federal laws.

(12) "Expose" or "exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption. The term includes potential, possible, or accidental exposure under normal conditions of use or in a reasonably foreseeable emergency.

(13) "Hazardous chemical" or "chemical" means an element, compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as defined by the OSHA standard in 29 CFR Section 1910.1200(d)(3), or by OSHA's written interpretations. A hazard determination may be made by employers who choose not to rely on the evaluations made by their suppliers if there are relevant qualitative or quantitative differences. A hazard determination shall involve the best professional judgment.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the workplace chemical list, the label, and the MSDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Material Safety Data Sheet" ("MSDS") means a document

containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(18) "MSHA standard" means the Hazard Communication Standard issued by the Mining Safety and Health Administration.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "Temporary workplace" means a stationary workplace that is staffed less than 20 hours a week. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may include pumping stations, emergency response sites, and similar workplaces.

(22) "Work area" means a room, a defined space, a utility structure, or an emergency response site in a workplace where hazardous chemicals are present, produced, or used and where employees are present.

(23) "Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas, with or without buildings, that is staffed 20 or more hours a week.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.004. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to employers who are not required to comply with the OSHA standard, the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(b) Chemical manufacturers, importers, and distributors shall provide MSDSs as required by Section 502.006. Penalties provided by Sections 502.014, 502.015, and 502.016 may be assessed against chemical manufacturers, importers, and distributors for failure to provide MSDSs.

(c) If an employer is covered by both this chapter and Chapter 125, Agriculture Code, the employer is required to comply only with this chapter.

(d) This chapter, except Section 502.009, does not apply to a hazardous chemical in a sealed and labeled package that is received and subsequently sold or transferred in that package if:

(1) the seal and label remain intact while the chemical is in the workplace; and

(2) the chemical does not remain in the workplace longer than five working days.

(e) This chapter does not require labeling of the following chemicals:

(1) any pesticide, as that term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(2) any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in those products such as flavors and fragrances, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(3) any distilled spirits that are beverage alcohols, wine, or malt beverages intended for nonindustrial use, as those terms are defined in the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

(4) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts or

regulations issued under those Acts by the Consumer Product Safety Commission.

(f) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(2) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not removed or defaced;

(B) the employer complies with Sections 502.006 and 502.009 with respect to laboratory employees; and

(C) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(3) tobacco or tobacco products;

(4) wood or wood products;

(5) articles;

(6) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(7) food, drugs, or cosmetics intended for personal consumption by an employee while in the workplace;

(8) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(9) any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

(10) radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.005. WORKPLACE CHEMICAL LIST. (a) For the purpose of

worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the board determines by rule for certain highly toxic or dangerous hazardous chemicals:

- (1) the identity used on the MSDS and container label; and
- (2) the work area in which the hazardous chemical is

normally present.

(b) The employer shall update the workplace chemical list as necessary but at least by December 31 of each year. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area or temporary workplace and must be readily available to employees and their representatives. All employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) An employer shall maintain a workplace chemical list for at least 30 years. The employer shall send complete records to the director if the employer ceases to operate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.006. MATERIAL SAFETY DATA SHEET. (a) A chemical manufacturer or distributor shall provide appropriate material safety data sheets to employers who acquire hazardous chemicals in this state with each initial shipment and with the first shipment after an MSDS is updated. The MSDSs must conform to the most current requirements of the OSHA standard.

(b) An employer shall maintain a legible copy of a current MSDS for each hazardous chemical purchased. If the employer does not have a current MSDS for a hazardous chemical when the chemical is received at the workplace, the employer shall request an MSDS in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current MSDS. The manufacturer or distributor shall respond with an appropriate MSDS in a timely manner.

(c) Material safety data sheets shall be readily available, on

request, for review by employees or designated representatives at each workplace.

(d) A copy of an MSDS maintained by an employer under this section shall be provided to the director on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.007. LABEL. (a) A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the MSDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address. Except as provided by Subsection (b), secondary containers must be relabeled with at least the identity appearing on the MSDS and appropriate hazard warnings.

(b) An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.008. OUTREACH PROGRAM. (a) The director shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.009; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, the outreach program, and the effects of hazardous chemicals.

(b) The director may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The director shall develop and provide to each employer a suitable form of notice providing employees with information relating

to employee rights under this chapter.

(d) The director shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(e) In cooperation with the director, an employer may provide an outreach program in the community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.009 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.009. EMPLOYEE EDUCATION PROGRAM. (a) An employer shall provide an education and training program for employees who use or handle hazardous chemicals.

(b) An employer shall develop, implement, and maintain at the workplace a written hazard communication program for the workplace that describes how the criteria specified in this chapter will be met.

(c) An education and training program must include, as appropriate:

(1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;

(2) the location by work area, acute and chronic effects, and safe handling of hazardous chemicals known to be present in the employees' work area and to which the employees may be exposed;

(3) the proper use of protective equipment and first aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.

(d) Training may be conducted by categories of chemicals. An employer must advise employees that information is available on the specific hazards of individual chemicals through the MSDSs. Protective equipment and first aid treatment may be by categories of hazardous chemicals.

(e) An employer shall provide additional instruction to an employee when the potential for exposure to hazardous chemicals in the employee's work area increases significantly or when the employer receives new and significant information concerning the hazards of a



chemical in the employee's work area. The addition of new chemicals alone does not necessarily require additional training.

(f) An employer shall provide training to a new or newly assigned employee before the employee works with or in a work area containing a hazardous chemical.

(g) An employer shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years by the employer. The department shall have access to those records and may interview employees during inspections.

(h) Emergency service organizations shall provide, to their members or employees who may encounter hazardous chemicals during an emergency, information on recognizing, evaluating, and controlling exposure to the chemicals.

(i) As part of an outreach program created in accordance with Section 502.008, the director shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.010 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.010. LIABILITY UNDER OTHER LAW. Providing information to an employee does not affect:

(1) the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals;

(2) the employer's responsibility to take any action to prevent occupational disease as required under other law; or

(3) any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.011 and amended by Acts 1993, 73rd Leg., ch. 528, eff. Sept. 1, 1993.

Sec. 502.011. COMPLAINTS AND INVESTIGATIONS. (a) The director or the director's representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an employer.

(b) A complaint received from a person relating to an alleged violation shall be referred to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect. The director or the director's representative shall investigate the complaint if:

(1) the applicable OSHA or MSHA standard is not in effect;  
or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, an officer or representative of the director may enter a workplace at reasonable times to inspect and investigate complaints.

(d) The department may find multiple violations by an employer based on distinct requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.012 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.012. REPORTING FATALITIES AND INJURIES. (a) Within 48 hours after the occurrence of an employee accident that directly or indirectly involves chemical exposure or that involves asphyxiation, and that is fatal to one or more employees or results in the hospitalization of five or more employees, the employer of any of the employees so injured or killed shall report the accident either orally or in writing to the department.

(b) The report to the department shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. If it is necessary to complete the investigation of an incident, the department may require additional reports in writing as

necessary.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.014. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an employer who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An employer who receives a notice of violation may respond to the department in writing within 15 days after the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the employer disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the employer may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the employer to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The employer may correct the violation and certify to the department that the corrections have been made.

(f) The employer may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the employer, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the employer may respond as provided by either Subsection (h) or (i) within 10 days after the date of receipt of the department's correspondence.

(h) The employer may correct the violation and certify to the department that the corrections have been made.

(i) The employer may request a hearing.

(j) A request for an informal conference or a statement by an employer that the employer is in compliance with the provision of this chapter does not waive the employer's right to a hearing.

(k) The director may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection (c), whichever is later.

(l) In determining the amount of the penalty, the director shall consider:

- (1) the employer's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the employee;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(m) Each day a violation continues may be considered a separate violation.

(n) The penalty may not exceed \$500 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.0141. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

(a) An administrative penalty may be assessed only after an employer charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the director shall issue an order requiring that the employer pay the penalty.

(e) The director may consolidate a hearing held under this section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.0142. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the employer against whom the order is issued of the amount of the penalty for the violation.

(b) Within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the employer shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, an employer who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the employer stating that the employer is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(d) Subsection (c)(1) does not apply to the state or a political subdivision. The penalty may not be enforced against the state or a political subdivision until all judicial review has been exhausted.

(e) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The employer who files an affidavit has the burden of proving that the employer is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(f) If the employer does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(g) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(h) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the employer to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(i) When the judgment of the court becomes final, the court shall proceed under this subsection. If the employer paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the employer. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the employer gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the employer gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the employer pays the amount.

(j) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59),

eff. Sept. 1, 1995.

Sec. 502.015. CIVIL PENALTY; INJUNCTION. (a) If it appears that an employer has violated, is violating, or is threatening to violate this chapter or any rule adopted or order issued under this chapter, the director may request the attorney general or the district, county, or city attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) injunctive relief to restrain the employer from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both the injunctive relief and the civil penalty.

(b) The penalty may be in an amount not to exceed \$2,000 a day for each violation, with a total not to exceed \$20,000 for that violation.

(c) In determining the amount of the penalty, the court shall consider the employer's history of previous violations, the seriousness of the violation, any hazard to health and safety of the public, the demonstrated good faith of the employer charged, and other matters as justice may require.

(d) Any civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. Any civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.016. CRIMINAL PENALTY. An employer who is required to disclose hazard information under this chapter and who proximately causes an occupational disease or injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information provided on an MSDS commits an offense

that is punishable by a fine of not more than \$10,000 for each violation. Each day of violation constitutes a separate offense, except that the fine may not exceed \$100,000 for that violation. This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.017. EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES. (a) An employer shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the director does not prepare the notice under Section 502.008, the employer shall prepare the notice.

(b) Employees who may be exposed to hazardous chemicals shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for the hazardous chemicals. Employees, on request, shall be provided a copy of a specific MSDS with any trade secret information deleted. In addition, employees shall receive training concerning the hazards of the chemicals and measures they can take to protect themselves from those hazards. Employees shall be provided with appropriate personal protective equipment. These rights are guaranteed.

(c) An employer may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has:

- (1) filed a complaint;
- (2) assisted an inspector of the department who may make or is making an inspection under Section 502.011;
- (3) instituted or caused to be instituted any proceeding under or related to this chapter;
- (4) testified or is about to testify in a proceeding under this chapter; or
- (5) exercised any rights afforded under this chapter on behalf of the employee or on behalf of others.

(d) Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(e) A waiver by an employee of the benefits or requirements of this chapter is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of



employment is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.013 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees (29 CFR 1910.1200(1)) apply to physicians treating persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.015 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.019. RULES. The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.016 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.020. WORKPLACE SAFETY FOR INMATES. A person imprisoned in a facility operated by or for the Texas Department of Criminal Justice is not an employee for the purposes of this chapter. The Texas Department of Criminal Justice shall provide a person imprisoned in a facility operated by or for the Texas Department of Criminal Justice the protections from exposure to hazardous chemicals in the workplace as provided for in this chapter.

Added by Acts 1999, 76th Leg., ch. 1332, Sec. 1, eff. June 19, 1999; Acts 1999, 76th Leg., ch. 1501, Sec. 1, eff. June 19, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.004, eff. Sept. 1, 2001.

### **CHAPTER 503. HEALTH RISK ASSESSMENT OF TOXIC SUBSTANCES AND HARMFUL PHYSICAL AGENTS**

Sec. 503.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Committee" means the Toxic Substances Coordinating Committee.
- (3) "Department" means the Texas Department of Health.
- (4) "Harmful physical agent" means a physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes:
  - (A) ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and
  - (B) acoustical, thermal, or mechanical vibration.
- (5) "Health risk assessment" means the use of objective data to characterize the potential adverse health effects that exposure to a toxic substance or a harmful physical agent may have on a person.
- (6) "Toxic substance" means a substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.002. TOXIC SUBSTANCES COORDINATING COMMITTEE. (a) The Toxic Substances Coordinating Committee is composed of one representative from the:

- (1) department;
  - (2) Department of Agriculture;
  - (3) Texas Natural Resource Conservation Commission;
  - (4) Parks and Wildlife Department;
  - (5) Department of Public Safety; and
  - (6) Railroad Commission of Texas.
- (b) The chief administrative officer of each agency shall appoint the agency representative to the committee. A representative serves at the will of the chief administrative officer or until the representative terminates employment with the agency, whichever occurs first.
- (c) The representative of the department serves as chairman of

the committee.

(d) The department shall provide administrative support to the committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.250, eff. Sept. 1, 1995.

Sec. 503.003. MEETINGS; NOTICE. (a) The committee shall meet:

(1) at the call of the chief administrative officer of any member agency; or

(2) at least once each quarter on a meeting date set by the committee.

(b) The committee must provide public notice of the meeting date not later than the 15th day before the date on which the committee holds the meeting.

(c) The committee shall adopt rules for the conduct of its meetings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.004. DUTIES OF COMMITTEE. (a) The committee shall coordinate communication among member agencies concerning each agency's efforts to regulate toxic substances and harmful physical agents.

(b) The committee shall develop a plan that provides for:

(1) intergovernmental cooperation concerning regulations to prevent and control the adverse health effects of toxic substances and harmful physical agents;

(2) a health risk assessment of emergency responses to accidents involving toxic substances or harmful physical agents;

(3) the coordination of agency programs relating to the prevention and control of adverse health effects resulting from exposure to toxic substances or harmful physical agents;

(4) the establishment of an integrated system to collect and manage information relating to toxic substances and harmful physical agents; and

(5) public education concerning the use of toxic substances and harmful physical agents and the potential adverse health effects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.005. HEALTH RISK ASSESSMENTS. (a) In its capacity to protect the public health, the department shall coordinate health risk assessments conducted under this chapter.

(b) Each agency represented on the committee shall consult with and advise the department concerning health risk assessment activities when beginning a health risk assessment. The agency shall consult with and advise the department when taking the action in an emergency or as soon as possible after taking the action. This section does not require department approval of the agency's action or health risk assessment.

(c) Each agency represented on the committee shall use federal standards and health risk assessments, if appropriate, and avoid duplicating federal efforts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.006. POWERS OF DEPARTMENT. (a) The department may establish an information management system and may collect and evaluate information relating to the use of toxic substances and harmful physical agents.

(b) The department may enter into agreements or contracts with federal, state, or local governmental entities, planning regions, and other public or private entities to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.007. EFFECT ON OTHER LAWS. This chapter does not amend or affect the regulatory activities or procedures authorized under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 505. MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT**

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Manufacturing Facility Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.

(a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to Standard Industrial Classification (SIC), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) "Board" means the Texas Board of Health.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) "Department" means the Texas Department of Health.

(6) "Director" means the director of the Texas Department of Health.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in Standard Industrial Codes (SIC) 20-39.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the elected or paid administrative head of a fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication

Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the department under Section 505.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(i).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in SIC Codes 20-39 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:



(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370,

or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.

(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a material safety data sheet with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 505.015, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 505.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a)  
Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for

community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.010. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator

may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(n) The penalty may not exceed \$500 a day for each day a violation continues, with a total not to exceed \$5,000 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by in Section 505.011(e), within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court

shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59),  
eff. Sept. 1, 1995.

Sec. 505.013. CIVIL PENALTIES. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.014. CRIMINAL PENALTIES. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than \$25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.



Sec. 505.015. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.016. RULES; FEES. (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) \$100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) \$200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) \$300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) \$400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) \$500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. The department may use up to 15 percent of the fees collected under this chapter and Chapter 506, or the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.017. NOTICE ISSUED UNDER EMERGENCIES. (a) When

immediate notification of a release by a facility to the state emergency response commission is required in accordance with EPCRA, the state agency responsible for the information submitted to the state emergency response commission, on receipt of the required notification, shall make a determination as to whether the release reported will substantially endanger human health or the environment.

(b) If the responsible state agency determines that a release will substantially endanger human health or the environment, the agency shall, on request, notify the state senator or representative who represents the area in which the facility is located of the release within four hours of receipt of the original notification.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 3, eff. September 1, 2011.

#### **CHAPTER 506. PUBLIC EMPLOYER COMMUNITY RIGHT-TO-KNOW ACT**

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Public Employer Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemical is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.

(a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) "Board" means the Texas Board of Health.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) "Department" means the Texas Department of Health.

(6) "Director" means the director of the Texas Department of Health.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person and that is operated by the state or a political subdivision of the state.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the elected or paid administrative head of a fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "Public employer" means:

- (A) the state and political subdivisions of the state, including state, county, and municipal agencies;
- (B) public schools, colleges, and universities;
- (C) river authorities and publicly owned utilities;
- (D) volunteer emergency service organizations; and
- (E) other similar employers who are not covered by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(22) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(24) "Tier two form" means:

(A) a form specified by the department under Section 506.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

(25) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.005. APPLICABILITY OF CHAPTER. (a) Public employers shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to

the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance, but a fee may not be associated with filing this report. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(e) A facility operator shall file a material safety data sheet with the department on the department's request.

(f) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(g) Documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 506.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the



availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.010. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order

issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) The director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal

conference provided for in Subsection (d), whichever is later.

(1) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(m) The penalty may not exceed \$50 a day for each day a violation continues, with a total not to exceed \$1,000 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this

section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided in Section 506.011(e), not later than the 30th day after the date on which a decision or order charging a facility operator with a penalty is final, the facility operator shall pay the penalty in full, unless the facility operator seeks judicial review of the amount of the penalty, the fact of the violation, or both. The board may by rule provide for appeals by the state and political subdivisions of the state.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a facility operator should be reduced or not assessed, the director shall remit to the facility operator the appropriate amount of any penalty payment already paid plus accrued interest.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the director may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.015. CIVIL PENALTIES. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard

as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.016. CRIMINAL PENALTIES. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than \$25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.017. RULES; FEES. (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) \$100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 15 percent of the fees collected under Chapter 505 and this chapter, or the amount of fees paid by the state and its political subdivisions under this chapter, whichever is greater, to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

**CHAPTER 507. NONMANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW ACT**

Sec. 507.001. SHORT TITLE. This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.003. FEDERAL LAWS AND REGULATIONS. In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during

manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) "Board" means the Texas Board of Health.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) "Department" means the Texas Department of Health.

(6) "Director" means the director of the Texas Department of Health.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person. The term does not include a facility subject to Chapter 505 or 506.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the elected or paid administrative head of a fire department.

(13) "Hazardous chemical" has the meaning given that term

by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an



oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the department under Section 507.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.005. APPLICABILITY OF CHAPTER. (a) Facility operators who are not subject to Chapter 505 or 506 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than

to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA, Section 311, but a fee may not be associated with filing the report.

(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a material safety data sheet with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 507.012, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 507.007. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the

local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 507.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.009. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against a facility operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal

conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good-faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the operator's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(n) The penalty may not exceed \$50 for each day a violation continues, with a total not to exceed \$1,000 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

## Sec. 507.010. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a)

An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

## Sec. 507.011. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL

REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by Section 507.010(e), within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59),  
eff. Sept. 1, 1995.

Sec. 507.012. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.013. RULES; FEES. (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only



to fund activities under this chapter. The fee may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) \$100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

#### **CHAPTER 508. AREA QUARANTINE FOR ENVIRONMENTAL OR TOXIC AGENT**

Sec. 508.001. DEFINITIONS. In this chapter:

(1) "Environmental or toxic agent" means any bacterium or other disease-producing organism, toxic substance, radioactive substance, or other hazardous substance capable of causing widespread human illness, death, or substantial negative economic impact.

(2) "Health authority" means a physician appointed as a health authority or a regional director under Chapter 121.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.002. APPLICABILITY. This chapter applies to any circumstance in which an environmental or toxic agent is introduced into the environment, including an act of terrorism.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of public health or one or more health authorities determine that the introduction of an environmental or toxic agent into the environment has occurred, the commissioner or authorities may impose an area quarantine in the manner and subject to the procedures provided for

an area quarantine imposed under Section 81.085. The commissioner of public health or a health authority may, with respect to an area quarantine imposed under this chapter, exercise any power for a response to the introduction of an environmental or toxic agent into the environment under this section that is authorized by Section 81.085 for a response to an outbreak of a communicable disease. The area quarantine must be accomplished by the least restrictive means necessary to protect public health considering the availability of resources.

(b) A quarantine imposed by a health authority under this section expires at the earlier of:

(1) the 24th hour after the time the quarantine is imposed;  
or

(2) the time that appropriate action to terminate the quarantine or impose superseding requirements is taken under Chapter 418, Government Code, or is taken by the commissioner of public health under this section.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.004. CRIMINAL PENALTY. A person commits an offense if the person knowingly fails or refuses to obey an order or instruction of the commissioner of public health or a health authority issued under this chapter and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

## **TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION**

### **SUBTITLE A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

#### **CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and mental retardation services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving the mentally disabled exists, it is the purpose of this subtitle to

ensure that a continuum of services is provided. The continuum of services includes facilities operated by the Texas Department of Mental Health and Mental Retardation and community services provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons with mental illness or mental retardation who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or mental retardation shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The department shall assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department shall ensure that mental health and mental retardation services are provided. The department shall provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and mental retardation services may be spent only to provide services to the priority populations identified in the department's long-range plan.

(g) It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the department shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404, Occupations Code.

(h) It is the policy of this state that the board serves as the state's mental health and mental retardation authority and is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and mental retardation services in this state. It is the policy of this

state that, when appropriate and feasible, the board may delegate the board's authority to a single entity in each region of the state that may function as the local mental health or mental retardation authority for one or more service areas in the region.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 19, eff. Sept. 1, 1993;  
Acts 1995, 74th Leg., ch. 821, Sec. 1, eff. Sept. 1, 1995; Acts  
2001, 77th Leg., ch. 1420, Sec. 14.800, eff. Sept. 1, 2001.

Sec. 531.002. DEFINITIONS. In this subtitle:

(1) "Board" means the Texas Board of Mental Health and Mental Retardation.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(3) "Chemical dependency" has the meaning assigned by Section 461.002.

(4) "Commissioner" means the commissioner of mental health and mental retardation.

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means the Texas Department of Mental Health and Mental Retardation.

(7) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8) "ICF-MR" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

(9) "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(10) "Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination,

including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(11) "Local mental retardation authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.

(12) "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(13) "Mental retardation services" includes all services concerned with research, prevention, and detection of mental retardation, and all services related to the education, training, habilitation, care, treatment, supervision, and control of persons with mental retardation, but does not include the education of school-age persons that the public educational system is authorized to provide.

(13-a) "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency.

(14) "Person with mental retardation" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, care, or control in the person's home or community or in a state school.

(15) "Priority population" means those groups of persons with mental illness or mental retardation identified by the department as being most in need of mental health or mental retardation services.

(16) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(17) "State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.01, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 2, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 17, eff. June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 1, eff. June 19, 2009.

Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

(a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 18, eff. June 11, 2009.

**CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

Sec. 532.001. COMPOSITION OF DEPARTMENT. (a) The Texas Department of Mental Health and Mental Retardation is composed of:

- (1) the Texas Board of Mental Health and Mental Retardation;
- (2) the commissioner of mental health and mental retardation; and
- (3) a staff under the direction of the commissioner.

(b) The Department of Aging and Disability Services and the Department of State Health Services also include community services operated by those departments and the following facilities, as appropriate:

- (1) the central office of each department;
- (2) the Austin State Hospital;
- (3) the Big Spring State Hospital;
- (4) the Kerrville State Hospital;
- (5) the Rusk State Hospital;
- (6) the San Antonio State Hospital;
- (7) the Terrell State Hospital;
- (8) the North Texas State Hospital;
- (9) the Abilene State Supported Living Center;
- (10) the Austin State Supported Living Center;
- (11) the Brenham State Supported Living Center;
- (12) the Corpus Christi State Supported Living Center;
- (13) the Denton State Supported Living Center;
- (14) the Lubbock State Supported Living Center;
- (15) the Lufkin State Supported Living Center;
- (16) the Mexia State Supported Living Center;
- (17) the Richmond State Supported Living Center;
- (18) the San Angelo State Supported Living Center;

- (19) the San Antonio State Supported Living Center;
- (20) the El Paso State Supported Living Center;
- (21) the Rio Grande State Center;
- (22) the Waco Center for Youth; and
- (23) the El Paso Psychiatric Center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 3, eff. Sept. 1, 1995;  
Acts 1997, 75th Leg., ch. 500, Sec. 1, eff. May 31, 1997; Acts 1999,  
76th Leg., ch. 543, Sec. 1, eff. June 18, 1999; Acts 2001, 77th  
Leg., ch. 893, Sec. 1, eff. June 14, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 19, eff.  
June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 1, eff. June  
14, 2013.

Sec. 532.002. SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that Act, this chapter expires September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.07, eff.  
Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1187, Sec. 1, eff. Sept. 1,  
1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.10, eff.  
June 17, 2011.

Sec. 532.003. COMPOSITION OF BOARD. (a) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) The members must be representatives of the public who have demonstrated interest in mental health, mental retardation,



developmental disabilities, or the health and human services system. At least one member must be a consumer of services for persons with mental illness or mental retardation or a family member of a consumer of those services.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 208, Sec. 1, eff. Aug. 28, 1995;

Acts 1995, 74th Leg., ch. 821, Sec. 4, eff. Sept. 1, 1995.

Sec. 532.0035. BOARD TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training session that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the department and board;
- (2) the programs operated by the department;
- (3) the roles and functions of the department;
- (4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to

reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 2, eff. Sept. 1, 1999.

Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT. (a) A person is not eligible for appointment as a board member if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(2) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than:

(A) compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(B) as a parent or guardian of a client or patient receiving services from the department.

(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the board or an employee of the department.

(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a board member or a department employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the board or act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(e) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.005. TERMS. Board members serve six-year terms.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.006. CHAIRMAN. The governor shall designate a board member as chairman.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.007. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) is not eligible for appointment to the board at the time of appointment as provided by Section 532.004(a);

(2) does not maintain during service on the board the qualifications required by Section 532.004(a);

(3) violates a prohibition established by Section 532.004(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM. A board

member is entitled to receive:

- (1) reimbursement for actual and necessary expenses incurred in discharging the member's duties; and
- (2) the per diem compensation as provided by appropriation for each day the member actually performs official duties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.

(b) A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.

(c) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.011. COMMISSIONER. (a) The commissioner of health and human services shall employ a commissioner in accordance with Section 531.0056, Government Code.

(b) To be qualified for employment as commissioner, a person must have:

(1) professional training and experience in the administration or management of comprehensive health care or human service operations; and

(2) proven administrative and management ability, preferably in the health care area.

(c) Repealed by Acts 1999, 76th Leg., ch. 1460, Sec. 13.01(3), eff. Sept. 1, 1999.

(d) The commissioner:

(1) has the administrative and decisional powers granted under this subtitle; and

(2) shall administer the department and this subtitle and ensure the effective administration of the department and its programs and services.

(e) The commissioner shall:

(1) establish qualifications for department personnel that balance clinical and programmatic knowledge and management experience; and

(2) standardize qualifications for personnel positions throughout the department.

(f) The commissioner shall:

(1) establish an organizational structure within the department that will promote the effective administration of this subtitle; and

(2) establish the duties and functions of the department's staff.

(g) The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to mental health and mental retardation services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.150, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 821, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1460, Sec. 2.21, 13.01(3) eff. Sept. 1, 1999.

Sec. 532.012. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as medical director, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for:

(1) oversight of the quality and appropriateness of clinical services delivered in department facilities or under contract to the department; and

(2) leadership in physician recruitment and retention and peer review.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 6, eff. Sept. 1, 1995.

Sec. 532.014. HEADS OF DEPARTMENTAL FACILITIES. (a) The commissioner shall appoint the head of each facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 7, eff. Sept. 1, 1995.

Sec. 532.015. RULES AND POLICIES. (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.

(b) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.016. PERSONNEL. (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of

personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1); and

(3) be filed with the governor's office.

(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 3, eff. Sept. 1, 1999.

Sec. 532.018. AUDITS. (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The director of the internal audit unit shall report directly to the commissioner.

(c) Each audit report shall be submitted directly to the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and

appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of an entity regulated under this subtitle or of an entity the creation of which is authorized by this subtitle;

(2) on a sign that is prominently displayed in the place of business of each entity regulated under this subtitle or of each entity the creation of which is authorized by this subtitle; or

(3) in a bill for service provided by an entity regulated under this subtitle or by an entity the creation of which is authorized by this subtitle.

(c) If a written complaint is filed with the department relating to an entity regulated by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the department of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The department shall keep an information file about each complaint filed with the department relating to an entity regulated by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.020. ADVISORY COMMITTEES. (a) The board shall appoint a medical advisory committee and any other advisory committees the board considers necessary to assist in the effective administration of the department's mental health and mental retardation programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties at the rates authorized for state officers and employees under the General Appropriations Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE. (a) The



board shall appoint a citizens' planning advisory committee that is composed of:

(1) three persons who have demonstrated an interest in and knowledge of the department system and the legal, political, and economic environment in which the department operates;

(2) three persons who have expertise in the development and implementation of long-range plans; and

(3) three members of the public.

(b) In addition to the requirements of Subsection (a), at least one member must be a consumer of services for persons with mental illness or a family member of a consumer of those services, and at least one member must be a consumer of services for persons with mental retardation or a family member of a consumer of those services.

(c) The committee shall:

(1) advise the department on all stages of the development and implementation of the long-range plan required by Section 533.032;

(2) review the development, implementation, and any necessary revisions of the long-range plan;

(3) review the department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and

(4) advise the board on:

(A) the appropriateness of the long-range plan;

(B) any identified problems related to the implementation of the plan;

(C) any necessary revisions to the plan; and

(D) the adequacy of the department's budget request.

(d) The board shall review the committee's reports in conjunction with information provided by the department on the long-range plan or the biennial budget request.

(e) The board shall allow the committee opportunities to appear before the board as needed.

(f) Before a board meeting relating to the development, implementation, or revision of the department's long-range plan, the department shall, in a timely manner, provide the committee with any information that will be presented to the board.

(g) Before submitting the department's biennial budget request to the board for discussion or approval, the department shall, in a

timely manner, provide the committee with a copy of the budget request.

(h) The department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(90), eff. June 17, 2011.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(7), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(90), eff. June 17, 2011.

## CHAPTER 533. POWERS AND DUTIES

### SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.0001. POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.22, eff. Sept. 1, 1999.

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health and mental retardation services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health and mental retardation services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health or mental retardation services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT. The department shall establish procedures to:

- (1) promote more efficient use of public funds;
- (2) ensure periodic review of department management and support activities in order to:
  - (A) improve department operations;
  - (B) improve the determination of costs;
  - (C) increase department productivity; and
  - (D) remain competitive with the private sector; and
- (3) ensure that the state not provide a service that is available through the private sector unless the state can provide the service at a lower cost.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.13, eff. Sept. 1, 1997.

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer program in a local mental health or mental retardation authority or a community center, the department may allocate available funds appropriated for providing volunteer services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer services in local mental health or mental retardation authorities and community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 3, eff. Sept. 1, 1999.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness or client with mental retardation in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 or under Subchapter D, Chapter 593, if the patient or client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient or client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the patient or client or by a person legally responsible for the patient's or client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient or client to recover damages for an injury for which the patient or client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient or client for an injury for which the patient or client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient or client, or the person legally responsible for the patient's or client's support, owns property; or

(2) the patient or client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient or client;

(2) the name and address of the person legally responsible for the patient's or client's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient or client and the person legally responsible for the patient's or client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The board by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient or client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's or client's support. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's or client's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.005. EASEMENTS. The department may grant a temporary

or permanent easement or right-of-way on land held by the department. The department must grant an easement or right-of-way on terms and conditions the department considers to be in the state's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 1, eff. June 18, 1999.

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The department shall report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas State Board of Medical Examiners a copy of any report or finding relating to an investigation of an allegation reported to that board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.801, eff. Sept. 1, 2001.

Sec. 533.007. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE. (a) The department, a local mental health or mental retardation authority, or a community center may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The board shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

(c) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993.

(d) Relettered as subsection (a) by Laws 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.

(e) to (h) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993.

(i) Relettered as subsection (b) by Laws 1999, 76th Leg., ch. 1209, eff. Sept. 1, 1999.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.02, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, a local mental health or mental retardation authority, or a community center may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 1993, 73rd Leg., ch. 646, Sec. 2, eff. Aug. 30, 1993.  
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 5, eff. Sept. 1, 1999.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS AND MENTAL RETARDATION. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness and mental retardation in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider

in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 6.04, eff. Sept. 1, 1995.

Sec. 533.009. EXCHANGE OF PATIENT AND CLIENT RECORDS. (a) Department facilities, local mental health or mental retardation authorities, community centers, other designated providers, and subcontractees of mental health and mental retardation services are component parts of one service delivery system within which patient or client records may be exchanged without the patient's or client's consent.

(b) The board shall adopt rules to carry out the purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 6, eff. Sept. 1, 1999.

Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner of the Health and Human Services Commission by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure;



(2) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(3) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 3, eff. September 1, 2005.

Sec. 533.010. INFORMATION RELATING TO PATIENT'S CONDITION. (a) A person, including a hospital, sanitarium, nursing or rest home, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental disorders and mental disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and mental retardation research and education in order to reduce mental disorders and mental disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

- (1) provides information under this section;
- (2) releases or publishes the findings and conclusions of the person or organization to advance mental health and mental retardation research and education; or
- (3) releases or publishes generally a summary of a study.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.011. RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE. (a) The department may return a nonresident person with mental retardation who is committed to a facility for persons with mental retardation in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with mental retardation in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to facilities for persons with mental retardation in this state or another state to the state of their residence.

(d) The superintendent of a department facility for persons with mental retardation may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with mental retardation returned to this state.

(e) The state returning a person with mental retardation to another state shall bear the expenses of returning the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.134, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.05, eff. Sept. 1,

2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.03, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 4, eff. Sept. 1, 1999.

Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The board shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b) The board's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The board shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c) The department shall notify each judge who has probate

jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 3, eff. Aug. 30, 1993;  
Acts 2001, 77th Leg., ch. 367, Sec. 2, eff. Sept. 1, 2001; Acts  
2003, 78th Leg., ch. 1214, Sec. 1, eff. Sept. 1, 2003.

Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a facility or program under the department's jurisdiction without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 2, eff. Aug. 28, 1995.

Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) A state agency, local agency, local mental health authority, or local mental retardation authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3) this section, if the entity is not covered by Subdivision (1) or (2).

(b) An agency or authority under Subsection (a)(3) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value,

including:

- (1) any installation costs;
- (2) the delivery terms;
- (3) the quality and reliability of the vendor's goods or services;
- (4) the extent to which the goods or services meet the agency's or authority's needs;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;
- (6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;
- (7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;
- (8) the cost of any employee training associated with the acquisition;
- (9) the effect of an acquisition on the agency's or authority's productivity;
- (10) the acquisition price; and
- (11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications.

(e) The state auditor or the department may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.

Sec. 533.017. PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. The department may allow a state agency, local agency, local mental health authority, or local mental retardation authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health or mental retardation services to purchase goods or services with the public money by participating in:

(1) a contract the department has made to purchase goods or services; or

(2) a group purchasing program established or designated by the department that offers discounts to providers of mental health or mental retardation services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.

Sec. 533.018. SPECIAL OLYMPICS TEXAS ACCOUNT. (a) The Texas Department of Mental Health and Mental Retardation Special Olympics Texas account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.2922, Transportation Code. Money in the account may be used only for the purposes of this section.

(b) The department administers the account. Annually, the department shall distribute the money deposited to the credit of the account to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

Added by Acts 2001, 77th Leg., ch. 475, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF SERVICES**

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return

of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

(4) "Commission" means the Health and Human Services Commission.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(8) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. [2439](#)), Sec. 1, eff. June 16, 2007.

Sec. 533.032. LONG-RANGE PLANNING. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

- (A) local authorities for mental health and mental retardation;
- (B) community representatives;
- (C) consumers of mental health and mental retardation services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state schools and state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state school and state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients;

(B) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533.038; and

(D) input solicited from consumers of services of state schools and state hospitals.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(91), eff. June 17, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(91), eff. June 17, 2011.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative



appropriations request, present the report to the:

- (A) governor;
- (B) governor's budget office;
- (C) lieutenant governor;
- (D) speaker of the house of representatives;
- (E) Legislative Budget Board; and
- (F) Health and Human Services Commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

(h) The department shall, in coordination with the Health and Human Services Commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the Health and Human Services Commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 4, eff. Aug. 30, 1993;  
Acts 1995, 74th Leg., ch. 76, Sec. 5.95(103), eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 1187, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(8), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.004, eff. September 1, 2013.

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The board by rule shall establish criteria regarding the uses of the

department's campus-based facilities as part of a full continuum of services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 6, eff. Sept. 1, 1999.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(92), eff. June 17, 2011.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(9), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(92), eff. June 17, 2011.

Sec. 533.0335. COMPREHENSIVE ASSESSMENT AND RESOURCE ALLOCATION PROCESS. (a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code.

(2) "Department" means the Department of Aging and

Disability Services.

(3) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 534.001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

- (1) a Medicaid waiver program;
- (2) the ICF-IID program; or
- (3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(b-1) In developing a comprehensive assessment instrument for purposes of Subsection (b), the department shall evaluate any assessment instrument in use by the department. In addition, the department may implement an evidence-based, nationally recognized, comprehensive assessment instrument that assesses the functional needs of an individual with intellectual and developmental disabilities as the comprehensive assessment instrument required by Subsection (b). This subsection expires September 1, 2015.

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) The department shall cooperate with the advisory committee to establish the prior authorization process required by Subsection (c). This subsection expires January 1, 2024.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 3.01, eff. September 1, 2013.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. (a) The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.73, eff. Sept. 1, 2003.

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The department by rule shall develop model program standards for mental health and mental retardation services for use by each state agency that provides or pays for mental health or mental retardation services. The department shall provide the model standards to each agency that provides mental health or mental retardation services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health and mental retardation services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.

Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. (a) The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.

(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an

amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.

(c) The center or proposed center proposing to accept the state center operation and service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.

(e) The Amarillo State Center is exempt from the requirements listed in Subsections (b) and (c).

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.

Sec. 533.035. LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES. (a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner may delegate to the local authorities the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination,

including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health and mental retardation authority department federal and department state funds to be spent in the local service area for:

- (1) community mental health and mental retardation services; and
- (2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or mental retardation.

(c) A local mental health and mental retardation authority, with the approval of the Department of State Health Services or the Department of Aging and Disability Services, or both, as applicable, shall use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

- (1) assembling a network of service providers;
- (2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services; and
- (3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local mental health and mental retardation authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533.0355(d); or

(2) the ICF-MR and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-MR and related waiver program qualified service provider in the local authority's service area where the service is needed.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 7, eff. June 16, 2007.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 7, eff. June 16, 2007.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.74, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. [2439](#)), Sec. 2, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. [2439](#)), Sec. 7, eff. June 16, 2007.

Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE. (a) The executive commissioner shall establish a local authority network advisory committee to advise the executive commissioner and the Department of State Health Services on technical and administrative issues that directly affect local mental health authority

responsibilities.

(b) The committee is composed of equal numbers of representatives of local mental health authorities, community mental health service providers, private mental health service providers, local government officials, advocates for individuals with mental health needs, consumers of mental health services, family members of individuals with mental health needs, and other individuals with expertise in the field of mental health appointed by the executive commissioner. In addition, the executive commissioner may appoint facilitators to the committee as necessary. In appointing the members, the executive commissioner shall also ensure a balanced representation of:

- (1) different regions of this state;
- (2) rural and urban counties; and
- (3) single-county and multicounty local mental health authorities.

(c) Members appointed to the advisory committee must have some knowledge of, familiarity with, or understanding of the day-to-day operations of a local mental health authority.

(d) The advisory committee shall:

- (1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;
- (2) advise the executive commissioner and the Department of State Health Services regarding evaluation and coordination of initiatives related to local mental health authority operations;
- (3) advise the executive commissioner and the Department of State Health Services in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:
  - (A) the needs and services of local communities; and
  - (B) the department's performance expectations;
- (4) coordinate with work groups whose actions may affect local mental health authority operations;
- (5) report to the executive commissioner and the Department of State Health Services on the committee's activities and recommendations at least once each fiscal quarter; and
- (6) work with the executive commissioner or the Department of State Health Services as the executive commissioner directs.

(e) For any written recommendation the committee makes to the



Department of State Health Services, the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(f) The committee is subject to Chapter 2110, Government Code, except that the committee is not subject to Section 2110.004 or 2110.008, Government Code. The committee is abolished on September 1, 2017, unless the executive commissioner adopts a rule continuing the committee in existence beyond that date.

(g) The Department of State Health Services may reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the General Appropriations Act.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 8, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 79, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. [2439](#)), Sec. 3, eff. June 16, 2007.

Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA.

(a) Each local mental health or mental retardation authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local mental health or mental retardation authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health or mental retardation authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health or mental retardation authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health and mental retardation services and members of the families of those consumers;

(C) consumers of services of state schools for persons with mental retardation, members of families of those consumers, and members of state school volunteer services councils, if a state school is located in the local service area of the local authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) goals to ensure a client with mental retardation is placed in the least restrictive environment appropriate to the person's care;

(D) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;

(E) goals to divert consumers of services from the criminal justice system;

(F) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(G) opportunities for innovation in services and service delivery.

(e) The department and the local mental health or mental retardation authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the

outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health or mental retardation authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2003, 78th Leg., ch. 358, Sec. 1, eff. June 18, 2003. Renumbered from Health and Safety Code, Section 533.0354 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(52), eff. September 1, 2005.

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the Department of State Health Services for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local

mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 4, eff. June 16, 2007.

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

- (1) ongoing and matched to the needs of the individual in type, duration, and intensity;
- (2) focused on a process of recovery designed to allow the individual to progress through levels of service;
- (3) guided by evidence-based protocols and a strength-based paradigm of service; and
- (4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(a-1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure, to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional

impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

- (1) major depressive disorder, including single episode or recurrent major depressive disorder;
- (2) post-traumatic stress disorder;
- (3) schizoaffective disorder, including bipolar and depressive types;
- (4) obsessive-compulsive disorder;
- (5) anxiety disorder;
- (6) attention deficit disorder;
- (7) delusional disorder;
- (8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or
- (9) any other diagnosed mental health disorder.

(a-2) The local mental health authority shall ensure that individuals described by Subsection (a-1) are engaged with treatment services in a clinically appropriate manner.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(b-1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), who are not described by Subsection (b):

- (1) post-traumatic stress disorder;
- (2) schizoaffective disorder, including bipolar and depressive types;
- (3) anxiety disorder; or
- (4) delusional disorder.

(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(93), eff. June 17, 2011.

(e) The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.75, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(93), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 2, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 6.06, eff. January 1, 2014.

Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local mental retardation authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local mental retardation authority responsibilities:

- (1) access;
- (2) intake;
- (3) eligibility functions;
- (4) enrollment, initial person-centered assessment, and service authorization;
- (5) utilization management;
- (6) safety net functions, including crisis management services and assistance in accessing facility-based care;
- (7) service coordination functions;
- (8) provision and oversight of state general revenue services;
- (9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and
- (10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local mental retardation authority must offer a state school as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), the executive commissioner shall require the local mental retardation authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the Department of Aging and Disability Services;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local mental retardation authority; and

(iii) may include increases necessary to

accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local mental retardation authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the Department of Aging and Disability Services shall review and determine the local mental retardation authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

- (1) program stability and viability;
- (2) the number of other qualified service providers in the area; and
- (3) the geographical area in which the local authority is located.

(g) The Department of Aging and Disability Services shall ensure that local services delivered further the following goals:

- (1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;
- (2) to respect the rights, needs, and preferences of an individual receiving services; and
- (3) to integrate individuals with mental retardation and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The Department of Aging and Disability Services shall ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533.038(d), including options such as the availability and types of ICF-MR placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.76, eff. Sept. 1, 2003.

Amended by:



Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 5, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1057 (S.B. 222), Sec. 2, eff. September 1, 2011.

Sec. 533.03551. FLEXIBLE, LOW-COST HOUSING OPTIONS. (a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

(b) The Department of Aging and Disability Services, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The Department of Aging and Disability Services shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 3.02, eff. September 1, 2013.

Sec. 533.03552. BEHAVIORAL SUPPORTS FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) In this section, "department" means the Department of Aging and Disability Services.

(b) Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization.

(c) Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

- (1) psychiatrist or psychologist;
- (2) physician;
- (3) registered nurse;
- (4) pharmacist or representative of a pharmacy;
- (5) behavior analyst;
- (6) social worker;
- (7) crisis coordinator;
- (8) peer specialist; and
- (9) family partner.

(d) In providing services and supports, a behavioral health intervention team established by the department shall:

- (1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;
- (2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;
- (3) provide support to the individual's family members and other caregivers;
- (4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and
- (5) provide clinical and other referrals.

(e) The department shall ensure that members of a behavioral health intervention team established under this section receive

training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 3.02, eff. September 1, 2013.

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.

(b) The department and the commission jointly may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The board and the commission may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461.0124.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department and commission for designation as a local behavioral health authority.

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of

the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

- (1) the local mental health authority; and
- (2) the commission.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department and commission shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department and the commission that services involving state funds that the authority oversees comply with relevant state standards.

(i) The board and the commission jointly may adopt rules to govern the operations of local behavioral health authorities. The department and the commission jointly may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 9, eff. Sept. 1, 1999.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

- (1) developing and implementing a local network development plan;
- (2) assembling and expanding a local provider network to increase consumer choice;
- (3) creating and enforcing performance standards for providers;
- (4) managing limited resources;
- (5) maximizing available funding;
- (6) producing the best client outcomes;
- (7) ensuring consumers of mental health services have control over decisions regarding their health;
- (8) developing procurement processes to protect public funds;
- (9) achieving the best mental health consumer outcomes possible; and
- (10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only

existing resources.

(h) The Department of State Health Services shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for

services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES.

(a) In developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a)

The department may provide mental health and mental retardation services through halfway houses, sheltered workshops, community centers, and other mental health and mental retardation services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit

Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

- (1) purchase supplies, materials, services, and equipment;
- (2) pay salaries of and wages to participants and employees;
- (3) construct, maintain, repair, and renovate facilities and equipment; and
- (4) establish and maintain a petty cash fund of not more than \$100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.038. FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION. (a) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, care, or control of clients with mental retardation.

(b) The department may specify the facility in which a client with mental retardation under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with mental retardation of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with mental retardation, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state schools, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social



Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533.032.

(f) The department may spend money appropriated for the state school system only in accordance with limitations imposed by the General Appropriations Act.

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 10, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 682 (H.B. [2276](#)), Sec. 1, eff. September 1, 2013.

Sec. 533.039. CLIENT SERVICES OMBUDSMAN. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.

(b) The ombudsman shall:

(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and

(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 11, eff. Sept. 1, 1999.

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness or mental retardation, or both, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Texas Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the Interagency Council on Early Childhood Intervention shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven

years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

(2) coordinate, if practicable, department and council activities and services involving children with mental illness and their families.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.46, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 57, Sec. 1, eff. May 15, 2003.

Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) At each department mental health facility, the department shall make short-term evaluation and diagnostic services available for emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services if evaluation and diagnostic services for the children and youth are not immediately available through a local mental health authority.

(b) The Texas Department of Human Services may pay for the services according to fees jointly agreed to by both agencies. The department may use payments received under the agreement to contract for community-based residential placements for emotionally disturbed children and youth.

(c) The department shall maintain computerized information on emotionally disturbed children and youth that contains both individual and aggregate information. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of the children and youth. The department may coordinate activities with the Texas Department of Human Services in developing the information. The department shall make the information available to the department's mental health facilities and to community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation

Commission, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The department shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The agencies shall review and by rule revise the memorandum not later than August each year.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.04, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.47, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 13, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 15, eff. June 17, 2011.

Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing home may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department mental health facility. The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department mental retardation facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health and mental retardation authority.

(f) A local mental health or mental retardation authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local mental health or mental retardation authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 5, eff. Aug. 30, 1993.

Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE. (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health or mental retardation authority, as appropriate, outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(g) The appropriate local mental health or mental retardation authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

(h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services

if the department terminates a contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS.

(a) The department and Texas Department of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department or Texas Department of Human Services needs a guardian of the person or estate, or both.

(b) The memorandum must prescribe:

(1) the facilities that must use the assessment; and  
(2) the circumstances in which the facilities must use the assessment.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 905, Sec. 4, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 798, Sec. 4, eff. Aug. 28, 1995.

Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS. (a)

The department may place on a clozapine treatment plan each patient in a state hospital for whom the treatment is medically feasible and appropriate. The department may place a patient on a treatment plan using a drug other than clozapine if the drug produces results that are similar to or better than clozapine in treating schizophrenics.

(b) If a patient in a state hospital responds to a treatment plan required or authorized by Subsection (a) to the extent that the patient can be discharged from the hospital, the department may:

(1) assist the patient in applying for disability benefits and for Medicaid if the patient is potentially eligible;

(2) place the patient in a community setting with continuing drug treatments and with medical monitoring;

(3) provide or ensure that the patient is provided supportive housing, rehabilitation services, and job placement, as

appropriate; and

(4) provide outpatient care at state hospitals or require a local mental health authority to provide outpatient care, as appropriate.

(c) The department may use facility beds vacated by patients discharged through the use of a treatment plan allowed by Subsection (a) for other appropriate uses.

Added by Acts 1993, 73rd Leg., ch. 973, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 533.044 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(31), eff. Sept. 1, 1995.

Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services to:

(1) amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and

(2) prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance.

(b) The interagency agreement must provide that:

(1) the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and

(2) the Texas Department of Human Services retain responsibility for making final eligibility decisions.

(c) The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.

Added by Acts 1995, 74th Leg., ch. 373, Sec. 1, eff. Aug. 28, 1995;  
Acts 1995, 74th Leg., ch. 655, Sec. 6.07, eff. Sept. 1, 1995.

Sec. 533.047. MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM. The department shall develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care



organizations of mental health and mental retardation services to Medicaid clients.

Added by Acts 1995, 74th Leg., ch. 574, Sec. 2, eff. Sept. 1, 1995.  
Renumbered from Health and Safety Code Sec. 533.045 by Acts 1997,  
75th Leg., ch. 165, Sec. 31.01(59), eff. Sept. 1, 1997.

Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In this section, "institution" means:

- (1) an ICF-MR; or
- (2) a state hospital, state school, or state center

maintained and managed by the department.

(b) The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.

(c) The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.

(d) The advisory committee shall meet at the call of the presiding officer.

(e) A member of the advisory committee serves at the will of the commissioner.

(f) A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

(g) The advisory committee shall develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.

Added by Acts 2001, 77th Leg., ch. 1239, Sec. 5, eff. Sept. 1, 2001.

Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state school only if:

- (1) the Health and Human Services Commission determines

that the private service provider will operate the state school at a cost that is at least 25 percent less than the cost to the department to operate the state school;

(2) the Health and Human Services Commission approves the contract;

(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF-MR survey; and

(4) the state school, when operated under the contract, treats a population with the same characteristics and need levels as the population treated by the state school when operated by the department.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(95), eff. June 17, 2011.

(c) If the department contracts with a private service provider to operate a state school, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.77(a), eff. Sept. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(11), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(95), eff. June 17, 2011.

Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:

(1) the Health and Human Services Commission determines that the private service provider will operate the hospital at a cost

that is at least 25 percent less than the cost to the department to operate the hospital;

(2) the Health and Human Services Commission approves the contract;

(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels as the population treated at the hospital when operated by the department; and

(4) the private service provider is required under the contract to operate the hospital at a quality level at least equal to the quality level achieved by the department when the department operated the hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(96), eff. June 17, 2011.

(c) If the department contracts with a private service provider to operate a state mental hospital, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.78(a), eff. Sept. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(12), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(96), eff. June 17, 2011.

Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the

proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an

advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the Department of State Health Services' Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical

patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(f) Not later than December 31, 2013, the department, in conjunction with the advisory panel, shall develop the initial version of the plan required by Subsection (a).

(g) Not later than August 31, 2014, the department shall:

(1) identify standards and methodologies for the implementation of the plan required by Subsection (a); and

(2) begin implementing the plan.

(h) Not later than December 1, 2014, the department shall submit a report to the legislature and governor that includes the initial version of the plan, the status of the plan's implementation, and the impact of the plan on the delivery of services.

(i) While the plan required by Subsection (a) is being

developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.

Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR CERTAIN PERSONS. The department shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broadbase of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.

**SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-MR PROGRAM**

Sec. 533.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION. (a) The department shall biennially develop a proposed plan on long-term care for persons with mental retardation.

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF-MR beds to be authorized in each region. In developing the proposed plan, the department shall consider:

- (1) the needs of the population to be served;
- (2) projected appropriation amounts for the biennium; and
- (3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission for approval.

(d) The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.

(e) The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502), Revised Statutes.

(f) After legislative action on the appropriation for long-term care services for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the number of ICF-MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the Health and Human Services Commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).



Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 6, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 747, Sec. 27, eff. Sept. 1, 1993.

Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department and the Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.

(b) The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.097, eff. Sept. 1, 1995.

Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST. (a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.

(b) The department shall list the applications in descending order using the date on which the department received the completed application.

(c) The department shall approve applications in the order in which the applications are listed.

(d) The department shall notify the Texas Department of Human Services of each application for a license or for compliance with licensing standards the department approves.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.098, eff. Sept. 1, 1995.

Sec. 533.066. INFORMATION RELATING TO ICF-MR PROGRAM. (a) At least annually, the department and the Texas Department of Human Services shall jointly sponsor a conference on the ICF-MR program to:

- (1) assist providers in understanding survey rules;
- (2) review deficiencies commonly found in ICF-MR

facilities; and

(3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-MR program.

(b) The departments also may use any other method to provide necessary information to providers, including publications.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.099, eff. Sept. 1, 1995.

#### **SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES**

Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness or mental retardation in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

(d) The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION

OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department may lease, transfer, or otherwise dispose of any surplus real property, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the board designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds and any interest from the proceeds may be appropriated only for improvements to the department's system of facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The board shall adopt forms, rules, and contracts that, in the board's best judgment, will protect the state's interests. The board may reject any or all bids.

(d) This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the department may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(5), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1175, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.79, eff. Sept. 1, 2003.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.80, eff. Sept. 1, 2003.

Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES ACCOUNT.

(a) The mental retardation community services account is an account in the general revenue fund that may be appropriated only for the provision of mental retardation services by or under contract with the department.

(b) The department shall deposit to the credit of the mental retardation community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental retardation community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.81, eff. Sept. 1, 2003.

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may

contract with the Texas Department of Criminal Justice to transfer facilities to that department or otherwise provide facilities for:

(1) inmates with mental illness or mental retardation in the custody of that department; or

(2) persons with mental illness or mental retardation paroled or released under that department's supervision.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.107, eff. September 1, 2009.

Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.

(b) Not later than September 1 of each even-numbered year, the department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons with substance abuse problems who cannot be treated in the community.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department may lease real property, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The department shall advertise a proposal for lease at

least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department may lease real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the board determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The board shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The board may reject any bid.

(f) This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the department may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1995, 74th Leg., ch. 821, Sec. 10, eff. Sept. 1, 1995.  
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 3, eff. June 18, 1999.

#### **SUBCHAPTER E. JAIL DIVERSION PROGRAM**

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health or mental retardation authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population,

including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

- (A) screening and assessment services; and
- (B) treatment services, including:
  - (i) assertive community treatment services;
  - (ii) inpatient crisis respite services;
  - (iii) medication management services;
  - (iv) short-term residential services;
  - (v) shelter care services;
  - (vi) crisis respite residential services;
  - (vii) outpatient integrated mental health services;
  - (viii) co-occurring substance abuse treatment

services;

- (ix) psychiatric rehabilitation and service coordination services;
- (x) continuity of care services; and
- (xi) services consistent with the Texas Council on Offenders with Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health or mental retardation authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health or mental retardation authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2003, 78th Leg., ch. 1214, Sec. 3, eff. Sept. 1, 2003.

## **CHAPTER 534. COMMUNITY SERVICES**

### **SUBCHAPTER A. COMMUNITY CENTERS**

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality,

hospital district, school district, or an organizational combination of two or more of those local agencies may establish and operate a community center.

(b) In accordance with this subtitle, a community center may be:

(1) a community mental health center that provides mental health services;

(2) a community mental retardation center that provides mental retardation services; or

(3) a community mental health and mental retardation center that provides mental health and mental retardation services.

(c) A community center is:

(1) an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;

(2) a local government, as defined by Section 791.003, Government Code;

(3) a local government for the purposes of Chapter 2259, Government Code; and

(4) a political subdivision for the purposes of Chapter 172, Local Government Code.

(d) A community center may be established only if:

(1) the proposed center submits to the department a copy of the contract between the participating local agencies, if applicable;

(2) the department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or mental retardation program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

(3) the department determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition to the services described in a center's plan, the center may provide



other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(f) Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g) An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:

- (1) is not operated to make a profit;
- (2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and
- (3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.07, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 601, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 835, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.276, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.82, eff. Sept. 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. [2303](#)), Sec. 2, eff. June 19, 2009.

Sec. 534.0015. PURPOSE AND POLICY. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state who are mentally ill or mentally retarded.

(b) It is the policy of this state that community centers strive to develop services for persons who are mentally ill or mentally retarded, and may provide requested services to persons with

developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.08, eff. Aug. 30, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 3, eff. June 19, 2009.

Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY. The board of trustees of a community center established by one local agency is composed of:

- (1) the members of the local agency's governing body; or
- (2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.09, eff. Aug. 30, 1993.

Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:

- (1) method of choosing the members; or
- (2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.10, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.200, eff. Sept. 1, 2003.

Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 12, eff. Sept. 1, 1999.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.12, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 13, eff. Sept. 1, 1999.

Sec. 534.006. TRAINING. (a) The board by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or mental retardation and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;

(2) the programs the community center operates;

(3) the community center's budget for that program year;

(4) the results of the most recent formal audit of the community center;

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any ethics policies adopted by the community center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff. Sept. 1, 1995.

Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL.

(a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a

board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B) as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of

interest, and removal prescribed by this chapter.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

- (1) violates Chapter 171, Local Government Code;
- (2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);
- (3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);
- (4) violates a provision of Subsection (e);
- (5) violates a provision of Section 534.0115; or
- (6) does not execute the affidavit required by Subsection (f).

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b) This section does not apply to:

- (1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or
- (2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to

policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 14, eff. Sept. 1, 1999.

Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the department's rules and standards.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.14, eff. Aug. 30, 1993.

Sec. 534.009. MEETINGS. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to the department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the

necessary postage paid using the United States postal service; or  
(2) another method agreed to by the board of trustees and the local agency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(84), eff. Sept. 1, 1995.

Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.16, eff. Aug. 30, 1993.

Sec. 534.011. PERSONNEL. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

(d) The board of trustees shall prescribe the number of employees and their salaries. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the commissioner.

(e) Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act



to determine the appropriate classification and relative compensation of officers and employees. The board of trustees may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the commissioner. The board of trustees may petition the department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.

(f) During a management audit of a community center, the department is entitled to confirm the method the center used to determine salaries and benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.17, eff. Aug. 30, 1993.

Sec. 534.0115. NEPOTISM. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b), the related member of the board of trustees may not participate in the deliberation of or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.18, eff. Aug. 30, 1993.

Sec. 534.012. ADVISORY COMMITTEES. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and mental retardation services.

(b) Each committee must be composed of at least three members.

(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.19, eff. Aug. 30, 1993.

Sec. 534.013. COOPERATION OF DEPARTMENT. The department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:

- (1) approved fiscal year operating budget;
- (2) most recent annual financial audit; and
- (3) staff salaries by position.

(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.20, eff. Aug. 30, 1993.

Sec. 534.015. PROVISION OF SERVICES. (a) The board of trustees may adopt rules to regulate the administration of mental health or mental retardation services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or mental retardation services.

(c) With the commissioner's approval, the board of trustees may contract with the governing body of another county or municipality to provide mental health and mental retardation services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This subtitle does not prevent a community center from providing services to a person with a chemical dependency, to a person with a developmental disability, or to a person with a mental disability, as defined by Section 535.001.

(b) A community center may provide those services by contracting with a public or private agency in addition to the department.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.21, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 7(a), eff. Aug. 30, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. [2303](#)), Sec. 4, eff. June 19, 2009.

Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a) A community center shall provide screening services for a person who requests voluntary admission to a department facility for persons with mental illness and for a person for whom proceedings for involuntary commitment to a department facility have been initiated.

(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a department facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent

with the department's rules and standards.

(d) The commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1) local conditions indicate that the other facility can provide the services more economically and effectively; or

(2) the commissioner determines that local conditions may impose an undue burden on the community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.017. FEES FOR SERVICES. (a) A community center shall charge reasonable fees for services the center provides, unless prohibited by other service contracts or law.

(b) The community center may not deny services to a person because of inability to pay for the services.

(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients and clients that the department has by law.

(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.22, eff. Aug. 30, 1993.

Sec. 534.0175. TRUST EXEMPTION. (a) If a client is the beneficiary of a trust that has an aggregate principal of \$250,000 or less, the corpus or income of the trust is not considered to be the property of the client or the client's estate and is not liable for the client's support. If the aggregate principal of the trust exceeds \$250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the client or the client's estate and are liable for the client's support.

(b) To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

Added by Acts 1993, 73rd Leg., ch. 166, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 1, eff. June 15,  
2001.

Sec. 534.018. GIFTS AND GRANTS. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30,  
1993.

Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30,  
1993.

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.

(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

- (1) the purchase or lease-purchase of that property at that price is necessary;
- (2) the board of trustees documents in the official minutes

the reasons why the purchase or lease-purchase is necessary at that price; and

(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant department rules competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 8, eff. Aug. 30, 1993.

Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a) A community center must receive from the department prior written approval to acquire real property, including a building, if the acquisition involves the use of department funds or local funds required to match department funds. In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.

(b) A community center must notify the department and each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of department funds or local funds required to match department funds. The commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c) The board shall adopt rules relating to the approval and notification process.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 9(a), eff. Sept. 1, 1993.

Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a) To acquire or to refinance the acquisition of real and personal property, to construct improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a

community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a mortgage on any of its properties.

(a-1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by Section 9.102, Business & Commerce Code:

- (1) an account;
- (2) a chattel paper;
- (3) a commercial tort claim;
- (4) a deposit account;
- (5) a document;
- (6) a general intangible;
- (7) a health care insurance receivable;
- (8) an instrument;
- (9) investment property;
- (10) a letter-of-credit right; and
- (11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve before issuance:

- (1) notes issued in the form of public securities, as that term is defined by Section 1201.002, Government Code;
- (2) obligations, as that term is defined by Section 1371.001, Government Code; and
- (3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(97), eff. June 17, 2011.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may

exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.24, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 161, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 11, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.277, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 826 (S.B. [812](#)), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. [71](#)), Sec. 22(13), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. [1179](#)), Sec. 25(97), eff. June 17, 2011.

Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of the department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant,



notify the private entity providing the gift or grant that:

- (1) the center may subsequently sell the real property; and
- (2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution stating:

(1) the public purpose that will be achieved by the sale;  
and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify the department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. The commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The board shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 231 (H.B. 243), Sec. 1, eff. June 14, 2013.

Sec. 534.031. SURPLUS PERSONAL PROPERTY. The department may transfer, with or without reimbursement, ownership and possession of surplus personal property under the department's control or jurisdiction to a community center for use in providing mental health or mental retardation services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.032. RESEARCH. A community center may engage in research and may contract for that purpose.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) It is the intent of the legislature that the department limit its control over, and routine reviews of, community center programs to those programs that:

- (1) use department funds or use required local funds that are matched with department funds;
- (2) provide core or required services;
- (3) provide services to former clients or patients of a department facility; or
- (4) are affected by litigation in which the department is a defendant.

(b) The department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) The department may determine whether a particular program uses department funds or uses required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.27, eff. Aug. 30, 1993.

Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a) The department by rule shall establish review, audit, and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001, the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by the commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of the commissioner, the department may sanction the center in accordance with board rules.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.28, eff. Aug. 30,

1993. Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 8, eff. Sept. 1, 1999.

Sec. 534.036. FINANCIAL AUDIT. (a) The department shall prescribe procedures for financial audits of community centers. The department shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The department shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068. Before prescribing or amending the procedures, the department shall set a deadline for those state agencies and departments to submit to the department proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center. The department may not implement the procedures without the approval of the Health and Human Services Commission.

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The department shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center. A state agency or department may not conduct additional financial audit activities of a community center without the approval of the Health and Human Services Commission.

(d) Expired.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 2, eff. Sept. 1, 1997.

Sec. 534.037. PROGRAM AUDIT. (a) The department shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The department may not implement the procedures without the approval of the Health and Human Services Commission. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) A program audit of a community center must be performed in accordance with procedures developed under this section.

(c) This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d) A program audit under this section must evaluate:

(1) the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;

(2) the effectiveness of the community center's organizations, programs, activities, or functions; and

(3) whether the community center is in compliance with applicable laws.

(e) Expired.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 3, eff. Sept. 1, 1997.

Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM. (a) The commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with the department;

(2) misused state or federal money;

(3) engaged in a fraudulent act, transaction, practice, or course of business;

(4) endangers or may endanger the life, health, or safety of a person served by the center;

(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;

(6) failed to respond to a deficiency in a review or audit;

(7) substantially failed to operate within the functions and purposes defined in the center's plan; or

(8) otherwise substantially failed to comply with this subchapter or department rules.

(b) The department shall give written notification to the center and local agency or combination of agencies responsible for

making appointments to the local board of trustees regarding:

- (1) the appointment of the manager or management team; and
- (2) the circumstances on which the appointment is based.

(c) The commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal the commissioner's decision to appoint a manager or management team as prescribed by board rule. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a)(2) or (4).

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 839, Sec. 1, eff. Sept. 1, 2003.

Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As the commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:

- (1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;
- (2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;
- (3) reallocate a resource and manage an asset of the center;
- (4) provide technical assistance to an officer or employee of the center;
- (5) require or provide staff development;
- (6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;
- (7) redesign, modify, or terminate a center program or service;
- (8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;
- (9) exercise a power or duty of an officer or employee of the center; or
- (10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local

board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

(c) The manager or management team shall report monthly to the commissioner and local board of trustees on actions taken.

(d) A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.

Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each month, the commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center's management and operation to a local board of trustees.

(b) The authority of the manager or management team continues until the commissioner determines that the relevant factors listed under Section 534.038(a) no longer apply.

(c) Following a determination under Subsection (b), the commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center's authorized officers and employees.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 839, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. COMMUNITY-BASED SERVICES**

Sec. 534.052. RULES AND STANDARDS. (a) The board shall adopt rules, including standards, the board considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local mental health or mental retardation authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health or mental retardation authority or other provider receiving contract funds as a local mental health or mental retardation authority or designated provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.29, eff. Aug. 30,  
1993.

Sec. 534.053. REQUIRED COMMUNITY-BASED SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

- (1) 24-hour emergency screening and rapid crisis stabilization services;
- (2) community-based crisis residential services or hospitalization;
- (3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
- (4) family support services, including respite care;
- (5) case management services;
- (6) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
- (7) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:

- (1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;
- (2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and
- (3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 4.021, eff. Sept. 1, 1993.

Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The board shall adopt, and the department shall enforce, rules that require continuity of services and planning for patient or client care between department facilities and local mental health or mental retardation authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local mental health or mental retardation authority before a facility discharges a patient or client or places the patient or client on an extended furlough with an intent to discharge.

(c) The local mental health or mental retardation authority shall plan with the department facility and determine the appropriate community services for the patient or client.

(d) The local mental health or mental retardation authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.30, eff. Aug. 30, 1993.

Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local mental health or mental retardation authority for each service area to ensure that services are provided to patient and client populations determined by the department. A local mental health or mental retardation authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(b) Repealed by Acts 1997, 75th Leg., ch. 869, Sec. 5, eff. Sept. 1, 1997.

(c) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:



(1) cannot negotiate a contract with a local mental health or mental retardation authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local mental health or mental retardation authority does not have the capacity to ensure the availability of that service.

(d) Repealed by Acts 1997, 75th Leg., ch. 869, Sec. 5, eff. Sept. 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.31, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 5, eff. Sept. 1, 1997.

Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) A mental health or mental retardation authority and a private provider shall use a contract designed by the department as a model contract for the provision of services at the community level for persons with mental retardation or mental illness, including residential services, if the contract involves the use of state funds or funds for which the state has oversight responsibility.

(b) The department shall design one or more model contracts and shall retain copies of each model contract in the central office of the department.

(c) A model contract must:

(1) require that the services provided by the private provider be based on the patient's or client's individual treatment plan;

(2) provide that a community-based residential facility that is a family home as defined in Chapter 123, Human Resources Code may house only a person with a disability as defined in Section 123.002, Human Resources Code;

(3) prohibit the use of the facility for purposes such as restitution centers, homes for substance abusers, or halfway houses; and

(4) outline a dispute resolution procedure.

(d) The department shall design a competitive procurement or similar system that a mental health or mental retardation authority

shall use in awarding an initial contract under this section.

(e) The system must require that each mental health or mental retardation authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(f) Each mental health or mental retardation authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.32, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 13, eff. Sept. 1, 1995.

Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental health or mental retardation authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.33, eff. Aug. 30, 1993.

Sec. 534.057. RESPITE CARE. (a) The board shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures necessary to administer this section, including procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The board shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The board shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The board may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the board under Subsection (c) must:

(1) prescribe minimum personnel qualifications the board determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the patient or client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the board determines that additional training is necessary.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.058. STANDARDS OF CARE. (a) The department shall develop standards of care for the services provided by a local mental health or mental retardation authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health or mental retardation authorities, the department shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.34, eff. Aug. 30, 1993.

Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local mental health or mental retardation authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health or mental retardation authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The

department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health or mental retardation authority may appeal the department's decision to impose a sanction on the authority. The board by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health or mental retardation authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health or mental retardation authority to monthly distributions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.35, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 9, eff. Sept. 1, 1999.

Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health or mental retardation authority.

(b) The department shall review the program quality and program performance results of a local mental health or mental retardation authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health or mental retardation authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.36, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 869, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 10, eff. Sept. 1, 1999.

## Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES.

(a) The department shall coordinate with each agency or department of the state that contracts with a local mental health or mental retardation authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

- (1) consistent with the requirements for the receipt of federal funding by the authority; and
- (2) based on risk assessment.

(b) A program audit must evaluate:

- (1) the extent to which a local mental health or mental retardation authority is achieving the results or benefits established by an agency or department of the state or by the legislature;
- (2) the effectiveness of the authority's organization, program, activities, or functions; and
- (3) the authority's compliance with law.

(c) A program audit of a local mental health or mental retardation authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the Health and Human Services Commission.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health or mental retardation authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.

Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The department shall prescribe procedures for a financial audit of a local mental health or mental retardation authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The department shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health or mental retardation authority. The department shall incorporate each agency's or department's financial

or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the department must set a deadline for agencies and departments of the state that contract with local mental health and mental retardation authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health or mental retardation authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the Health and Human Services Commission.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.

Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The department shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health or mental retardation authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health or mental retardation authority without the approval of the Health and Human Services Commission.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The department shall develop mechanisms for periodically monitoring the services of a provider who contracts with a local mental health or mental retardation authority to provide services for persons with mental retardation or mental illness at the community level, including residential services, if state funds or funds for which the state has oversight responsibility are used to pay for at least part of the services.

(b) The local mental health or mental retardation authority

shall monitor the services to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(c) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health or mental retardation authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(d) The department may withdraw funding from a local mental health or mental retardation authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with board rules.

(e) The board by rule shall prescribe procedures a local mental health or mental retardation authority must follow in remedying a problem with a provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 12, eff. Sept. 1, 1999.

Sec. 534.063. PEER REVIEW ORGANIZATION. The department shall assist a local mental health or mental retardation authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.37, eff. Aug. 30, 1993.

Sec. 534.064. CONTRACT RENEWAL. The commissioner may refuse to renew a contract with a local mental health or mental retardation authority and may select other agencies, entities, or organizations to be the local mental health or mental retardation authority if the



department's evaluation of the authority's performance indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 14, eff. Sept. 1, 1995.

Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A mental health or mental retardation authority shall review a contract scheduled for renewal that:

- (1) is between the authority and a private provider;
- (2) is for the provision of mental health or mental retardation services at the community level, including residential services; and
- (3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The mental health or mental retardation authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The mental health or mental retardation authority and private provider shall negotiate a contract renewal at arms length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 15, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 15, eff. Sept. 1, 1999.

Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local mental health or mental retardation authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health or mental retardation programs, as appropriate.

(b) The department shall establish, for community services

divisions of department facilities that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to other local mental health or mental retardation authorities.

(c) Patient fee income, third-party insurance income, services and facilities contributed by the local mental health or mental retardation authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health or mental retardation authority. The department may disallow or reduce the value of services claimed as support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 16, eff. Sept. 1, 1995.

Sec. 534.067. FEE COLLECTION POLICY. The department shall establish a uniform fee collection policy for all local mental health or mental retardation authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993.

Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The board by rule, in cooperation with local mental health and mental retardation authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health or mental retardation authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 11, eff. Aug. 30, 1993.

Sec. 534.068. AUDITS. (a) As a condition to receiving funds under this subtitle, a local mental health and mental retardation

authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health or mental retardation authority shall use an invitation-for-proposal process as prescribed by the department to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on an authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the department, subject to review and comment by the state auditor.

(c) The local mental health or mental retardation authority shall file the required number of copies of the audit report with the department by the date prescribed by the department. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health or mental retardation authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.39, eff. Aug. 30, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 68, eff. September 1, 2013.

Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS.

(a) The board by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness or mental retardation.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each mental health or mental retardation authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The board by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a mental health or mental retardation authority that fails to submit the quarterly reports required by this section.

(d) In this section "prospective payment funds" means money the department prospectively provides to a mental health or mental retardation authority to provide community services to certain persons with mental retardation or mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 534.071. **ADVISORY COMMITTEE.** A local mental health or mental retardation authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health and mental retardation services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 13, eff. Sept. 1, 1999.

### **SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS**

Sec. 534.101. **HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY.** (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by the department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by the department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant to Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. The department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by the department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services

through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1229, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.530, eff. Sept. 1, 2003.

Sec. 534.102. LAWS AND RULES. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may

exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and rules of the Texas Department of Insurance.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.531, eff. Sept. 1, 2003.

Sec. 534.103. APPLICATION OF LAWS AND RULES. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.532, eff. Sept. 1, 2003.

Sec. 534.104. APPLICATION OF SPECIFIC LAWS. (a) A nonprofit health maintenance organization created under Section 534.101 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.802, eff. Sept. 1,  
2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.533, eff. Sept. 1,  
2003.

Sec. 534.105. CONSIDERATION OF BIDS. The department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.

Sec. 534.106. CONDITIONS FOR CERTAIN CONTRACTS. A contract between the department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 16, eff. Sept. 1, 1999.

#### **CHAPTER 535. SUPPORT SERVICES**

Sec. 535.001. DEFINITIONS. In this chapter:

(1) "Assistance" means a subsidy granted by the department to provide support services to a client.

(2) "Client" means a person with a mental disability who lives independently or a family who receives assistance under this chapter.

(3) "Family" means a group that consists of a person with a mental disability and that person's parent, sibling, spouse, child, or legal guardian. The group may include others.

(4) "Legal guardian" means a person appointed by a court of competent jurisdiction to exercise powers over a person with a mental disability.

(5) "Mental illness" has the meaning assigned by Section



571.003.

(6) "Mental retardation" has the meaning assigned by Section 591.003.

(7) "Other support programs" means:

(A) all forms of local, state, or federal support services other than assistance;

(B) contract programs; or

(C) support services provided by public or private funds for persons with mental disabilities or their families.

(8) "Parent" means a natural, foster, surrogate, or adoptive parent.

(9) "Person with a mental disability" means:

(A) a person with mental illness;

(B) a person with mental retardation;

(C) a person with a pervasive developmental disorder;

or

(D) a person younger than four years of age who is eligible for early childhood intervention services.

(10) "Pervasive developmental disorder" means a disorder that begins in childhood and that meets the criteria for a pervasive developmental disorder established in the Diagnostic and Statistical Manual, Edition III-R.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(b), eff. Sept. 1, 2001.

Sec. 535.002. ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM.

(a) The department shall adopt rules, procedures, guidelines, and standards to implement and administer this chapter, including:

(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients;

(2) standards and procedures for approving qualified programs and support services;

(3) procedures for conducting a periodic review of clients;

(4) procedures and guidelines for determining when assistance duplicates other support programs or results in excessive

support to a client;

(5) rules establishing reasonable payment rates for qualified programs and support services under this chapter; and

(6) rules establishing a copayment system in accordance with Section 535.009.

(b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a local mental health or mental retardation authority as a provider of services if other providers are available.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(c), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.82A, eff. Sept. 1, 2006.

Sec. 535.003. ELIGIBILITY. (a) A family, or a person with a mental disability who lives independently, may apply for assistance.

(b) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need. In addition, a person with a mental disability who lives independently must be 18 years of age or older.

(c) The department shall determine eligibility and the need for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, may require and shall provide any additional evaluations.

(d) The department shall determine the applicant's needs and the support services for which the applicant is eligible after consulting with the applicant.

(e) In determining eligibility for support services under this chapter, the department shall determine if the applicant is eligible to receive the services from other support programs and may deny the application if it determines that the applicant is eligible to receive services that are available from another support program. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.

(f) A local or state agency may not consider assistance received under this chapter in determining eligibility for another support program unless that consideration is required by federal regulations.

(g) The department shall provide the applicant an opportunity for a hearing to contest the denial of an application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(d), eff. Sept. 1, 2001.

Sec. 535.004. PROVISION OF ASSISTANCE AND SUPPORT SERVICES.

(a) The department shall provide assistance to compensate a client for present and future expenses incurred to maintain in the community a family member with a mental disability or a person with a mental disability who lives independently, including:

(1) the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a mental disability;

(2) medical, surgical, therapeutic, diagnostic, and other health services related to the person's mental disability;

(3) counseling or training programs that assist a family in providing proper care for the family member with a mental disability or assist the person with a mental disability who lives independently, and that provide for the special needs of the family or person;

(4) attendant care, home health aid services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5) respite support for a family that is the client;

(6) transportation services for the person with a mental disability; and

(7) transportation, room, and board costs incurred by the family or the person with a mental disability during evaluation or treatment of the person with a mental disability that have been preapproved by the department.

(b) The department by rule may add services and programs for

which the department may provide assistance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.005. SUPPORT SERVICES FOR CERTAIN CLIENTS. The department may contract with the Texas Department of Human Services to provide support services to clients of the Texas Department of Human Services who are mentally disabled and eligible to receive assistance under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(e), eff. Sept. 1, 2001.

Sec. 535.006. LIMITATION OF DUTY. The department's duty to provide assistance under this chapter is determined and limited by the funds specifically appropriated to administer this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(f), eff. Sept. 1, 2001.

Sec. 535.007. PAYMENT OF ASSISTANCE. (a) The department may grant assistance of not more than \$3,600 a year to a client. The department may distribute the assistance periodically or in a lump sum, according to the client's needs. The commissioner or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b) In addition to the assistance authorized by Subsection (a), the department may award to a client a one-time grant of assistance of not more than \$3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a mental disability. The commissioner or the commissioner's designee may individually grant additional amounts to clients.

(c) The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a mental disability or the head of the family, as

appropriate, the department may distribute the assistance directly to the client or to a qualified program or provider of services serving the client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.008. SELECTION OF PROGRAMS OR PROVIDERS. (a) Each client may select the client's program or provider of services, except that the client may select only a program or provider that complies with the department's support services standards.

(b) The department shall require each program or provider to comply with the department's support services standards relating to the provision of support services and may disapprove payments to a program or provider that does not comply with the rules.

(c) The department shall assist each client in locating and selecting qualified programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.009. COPAYMENT SYSTEM. The department shall establish a copayment system with each client using a sliding scale for payments determined according to:

(1) the client's need for assistance to acquire the necessary support services; and

(2) the client's ability to pay for those services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.010. CHARGE. (a) The department by rule shall establish a reasonable charge for each authorized support service.

(b) The department's liability for the cost of a support service is limited to the amount of the charge established by the department for the service less the amount of any copayment required from the client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.011. CLIENT RESPONSIBILITY FOR PAYMENT. Each client shall pay:

- (1) the client's required copayment; and
- (2) the amount of charges in excess of the amount the department establishes for the service or the amount incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(g), eff. Sept. 1, 2001.

Sec. 535.012. REVIEW OF CLIENT'S NEEDS. (a) The department shall regularly review each client's needs as established by the department.

(b) The department shall review each client's needs when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.013. NOTIFICATION OF CHANGE IN CIRCUMSTANCES. The department shall require each client to notify the department of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 535.014. CRIMINAL PENALTY. (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this chapter for himself or another person:

- (1) makes or causes to be made a statement or representation the person knows to be false; or
- (2) solicits or accepts any assistance for which the person knows he, or the person for whom the solicitation is made, is not eligible.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.005(h), eff. Sept. 1, 2001.

**SUBTITLE B. STATE FACILITIES**  
**CHAPTER 551. GENERAL PROVISIONS**

**SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE FACILITIES**

Sec. 551.001. DEFINITIONS. In this subtitle:

- (1) "Board" means the Texas Board of Mental Health and Mental Retardation.
- (2) "Commissioner" means the commissioner of mental health and mental retardation.
- (3) "Department" means the Texas Department of Mental Health and Mental Retardation.
- (4) "Department facility" means a facility under the department's jurisdiction for persons with mental illness or mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.002. PROHIBITION OF INTEREST. A member of the board, the superintendent of a department facility, or a person connected with a department facility may not:

- (1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or
- (2) have an interest in a contract with a department facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The superintendent of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

- (b) The superintendent may deposit or invest those funds in:
- (1) a bank in this state;
  - (2) federal bonds or obligations; or
  - (3) bonds or obligations for which the faith and credit of

the United States are pledged.

(c) The superintendent may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The facility's business manager shall maintain records of the amount of funds on deposit for each facility patient or client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.004. BENEFIT FUND. (a) The superintendent may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent is the trustee of the fund.

(b) The superintendent may spend money from the benefit fund for:

- (1) educating or entertaining the patients or clients;
- (2) barber or cosmetology services for the patients or clients; and
- (3) the actual expense incurred in maintaining the fund.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.005. DISBURSEMENT OF PATIENT FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent and business manager.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.006. FACILITY STANDARDS BY DEPARTMENT OF HEALTH. (a) The Texas Department of Health by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) The Texas Department of Health shall approve department facilities that meet applicable standards and, when requested, shall certify the approval to the Texas Department of Human Services or the



United States Health Care Financing Administration.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The department shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The department may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The department shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c) The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.

(d) The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.

(e) The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.

(f) The department may reject any or all bids.

(g) The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.008. TRANSFER OF FACILITIES. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner of the Texas Youth Commission.

(b) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment, and land appurtenant to the facilities.

Added by Acts 1995, 74th Leg., ch. 312, Sec. 2, eff. June 5, 1995.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 24, eff. June 8, 2007.

Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT. (a) The Department of State Health Services shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults sentenced to a state mental facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis

stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

(g) Repealed by Acts 2009, 81st Leg., R.S., Ch. 83, Sec. 3, eff. May 20, 2009.

(h) Repealed by Acts 2009, 81st Leg., R.S., Ch. 83, Sec. 3, eff. May 20, 2009.

Added by Acts 2007, 80th Leg., R.S., Ch. 1188 (H.B. 654), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 1, eff. May 20, 2009.

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 2, eff. May 20, 2009.

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 3, eff. May 20, 2009.

**SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT AND BUSINESS MANAGER**

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent of a department facility is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients and clients;

(2) keep a register of all patients and clients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money is spent judiciously and economically;

(5) keep an accurate and detailed account of all money

received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with board rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' and clients' interest and welfare;

(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 821, Sec. 17, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 20, eff. June 11, 2009.

Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING CENTER DIRECTOR. (a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

(1) oversee the admission and discharge of residents and clients;

(2) keep a register of all residents and clients admitted to or discharged from the center;

(3) ensure that the civil rights of residents and clients of the center are protected;

(4) ensure the health, safety, and general welfare of residents and clients of the center;

(5) supervise repairs and improvements to the center;

(6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 21, eff. June 11, 2009.

Sec. 551.024. SUPERINTENDENT'S DUTY TO ADMIT COMMISSIONER AND BOARD MEMBERS. (a) The superintendent shall admit into every part of the department facility the commissioner and members of the board.

(b) The superintendent shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner or board member.

(c) The superintendent shall give to the commissioner or a board member any requested copy, abstract, or report.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If a

person receiving inpatient mental retardation services or court-ordered inpatient mental health services in a department facility leaves the facility without notifying the facility or without the facility's consent, the facility superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.026. BUSINESS MANAGER. (a) The business manager is the chief disbursing officer of the department facility.

(b) The business manager is directly responsible to the superintendent.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT CARE**

Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) The department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to the department's care. The department may perform this duty through an authorized agent.

(b) The department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing home or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If the department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine; or

(2) dental treatment or services for the person on the advice and consent of a dentist licensed by the State Board of Dental Examiners and of two physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are available, the department may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b) As necessary to establish and operate the clinics, the department may:

- (1) acquire facilities;
- (2) hire personnel;
- (3) adopt rules; and
- (4) contract with persons, corporations, and local, state, and federal agencies.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE. (a) The department may establish a mental hygiene clinic service through its agents and facilities.

(b) The clinic service shall cooperate with the Texas Education Agency and local boards of education in studying the mental and physical health of children:

- (1) with serious retardation in school progress or in mental development; or
- (2) who have personality development problems.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.49, eff. Sept. 1, 1997.

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) The

department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent of a department facility may, in accordance with department rules, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' benefit fund, the patients' trust fund, or a revolving fund for use by the patients. A patient may keep the finished product if the patient purchases the material for the product from the state.

(d) The department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to board policy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

## **CHAPTER 552. STATE HOSPITALS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 552.001. HOSPITAL DISTRICTS. (a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.0011. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Direct care employee" means a state hospital employee who provides direct delivery of services to a patient.



(4) "Direct supervision" means supervision of the employee by the employee's supervisor with the supervisor physically present and providing the employee with direction and assistance while the employee performs his or her duties.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(7) "Patient" means an individual who is receiving voluntary or involuntary mental health services at a state hospital.

(8) "State hospital" means a hospital operated by the department primarily to provide inpatient care and treatment for persons with mental illness.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 2, eff. June 14, 2013.

#### **SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS**

Sec. 552.012. CLASSIFICATION AND DEFINITION OF PATIENTS. (a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

(1) possesses no property;

(2) has no person legally responsible for the patient's support; and

(3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

(1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2) has a person legally responsible for the patient's support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.013. SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS.

(a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and

nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

(1) of the patient's spouse, if able to do so; or

(2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.014. CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT.

(a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1) the patient's parent fails to pay child support as required by the order; or

(2) the patient's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.015. INVESTIGATION TO DETERMINE MEANS OF SUPPORT. (a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.016. FEES. (a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The department may use the projected cost of providing inpatient services to establish the maximum fee that may be charged to a payer.

(c) The department may establish the maximum fee according to one or a combination of the following:

- (1) a statewide per capita;
- (2) an individual facility per capita; or
- (3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

- (1) who is not an individual; and
- (2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.017. SLIDING FEE SCHEDULE. (a) The department by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The department shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their current financial statement or most recent federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The department shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 278, Sec. 1, eff. June 5, 1995.

Sec. 552.018. TRUST PRINCIPALS. (a) If a patient is the beneficiary of a trust that has an aggregate principal of \$250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or the patient's estate and is not liable for the patient's support. If the aggregate principal of the trust exceeds \$250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or the patient's estate and are liable for the patient's support.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption

provided by this section:

- (1) a guardianship established under the Texas Probate Code;
- (2) a trust established under Chapter 142, Property Code;
- (3) a facility custodial account established under Section 551.003;
- (4) the provisions of a divorce decree or other court order relating to child support obligations;
- (5) an administration of a decedent's estate; or
- (6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 2, eff. June 15, 2001.

Sec. 552.019. FILING OF CLAIMS. (a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction:

- (1) to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment; or

- (2) if the liability arises under Subchapter D, Chapter 593, to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(b) On a sufficient showing, the court may enter judgment against:

- (1) the person responsible for the patient for the costs of the patient's support, maintenance, and treatment; or

- (2) the person responsible for the resident for the costs of the resident's support and maintenance.

(c) Sufficient evidence to authorize the court to enter judgment is:

- (1) a verified account, sworn to by the superintendent or director of the hospital in which the patient is being treated, or

has been treated, as to the amount due; or

(2) a verified account, sworn to by the superintendent or director of the residential care facility in which the person with mental retardation resided or has resided, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section:

(1) "Person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

(2) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(3) "Resident" means a person admitted to a residential care facility operated by the department for persons with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.020. APPLICATION. Except as provided by Subchapter C, Chapter 73, Education Code, this subchapter does not apply to The University of Texas M. D. Anderson Cancer Center.

Added by Acts 1995, 74th Leg., ch. 3, Sec. 4, eff. Sept. 1, 1995.

#### **SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE HOSPITALS**

Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the superintendent of the state hospital.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff.

June 14, 2013.

Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING. (a) Before a state hospital employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Upon completion of such training and instruction, the department shall evaluate the employee for competency. The department shall ensure the basic state hospital employee competency course focuses on:

(1) the uniqueness of the individuals the state hospital employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental illness; and

(3) the conduct expected of state hospital employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding topics relevant to providing care for individuals with mental illness, including:

(1) the general operation and layout of the state hospital at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental illness;

(3) an introduction to substance abuse;

(4) an introduction to dual diagnosis;

(5) the rights of individuals with mental illness who receive services from the department;

(6) respecting personal choices made by patients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental illness;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

- (10) first aid;
- (11) cardiopulmonary resuscitation;
- (12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and
- (13) the rights of state hospital employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each patient for whom the direct care employee will provide direct care, including the following topics:

- (1) prevention and management of aggressive or violent behavior;
- (2) observing and reporting changes in behavior, appearance, or health of patients;
- (3) positive behavior support;
- (4) emergency response;
- (5) person-directed plans;
- (6) self-determination; and
- (7) trauma-informed care.

(d) In addition to the training required by Subsection (c), the department shall provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding:

- (1) seizure safety;
- (2) techniques for:
  - (A) lifting;
  - (B) positioning; and
  - (C) movement and mobility;
- (3) working with aging patients;
- (4) assisting patients:
  - (A) who have a visual impairment;
  - (B) who have a hearing deficit; or
  - (C) who require the use of adaptive devices and specialized equipment;
- (5) communicating with patients who use augmentative and alternative devices for communication;
- (6) assisting patients with personal hygiene;
- (7) recognizing appropriate food textures;



(8) using proper feeding techniques to assist patients with meals; and

(9) physical and nutritional management plans.

(e) The executive commissioner shall adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. The department shall develop an information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department shall develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

#### **SUBCHAPTER D. INSPECTOR GENERAL DUTIES**

Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

- (1) a summary of the activities performed during an investigation for which the inspector general provided assistance;
- (2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and
- (3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

- (1) executive commissioner;
- (2) commissioner of state health services;
- (3) commissioner of the Department of Family and Protective Services;
- (4) State Health Services Council;
- (5) governor;
- (6) lieutenant governor;
- (7) speaker of the house of representatives;
- (8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;
- (9) state auditor; and
- (10) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the

inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual state hospital regarding:

- (1) the number and type of investigations conducted with the assistance of the inspector general;
- (2) the number and type of investigations involving a state hospital employee;
- (3) the relationship of an alleged victim to an alleged perpetrator, if any;
- (4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and
- (5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

- (1) executive commissioner;
- (2) commissioner of state health services;
- (3) commissioner of the Department of Family and Protective Services;
- (4) State Health Services Council;
- (5) Family and Protective Services Council;
- (6) governor;
- (7) lieutenant governor;

- (8) speaker of the house of representatives;
- (9) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;
- (10) state auditor; and
- (11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.104. RETALIATION PROHIBITED. The department or a state hospital may not retaliate against a department employee, a state hospital employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

## **CHAPTER 553. STATE SCHOOLS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 553.001. EPILEPSY. A person may not be denied admission to a state institution or school because the person suffers from epilepsy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

### **SUBCHAPTER B. STATE SCHOOLS**

Sec. 553.022. SAN ANTONIO STATE SCHOOL. (a) The San Antonio State School is for the education, care, and treatment of persons with mental retardation.

(b) The Texas Department of Mental Health and Mental Retardation may enter into agreements with the Texas Department of Health for use of the excess facilities of the Texas Center for Infectious Disease in the operation of the school.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 107, Sec. 8, eff. Sept. 1, 1995.

**CHAPTER 554. STATE CENTERS AND HOMES****SUBCHAPTER A. WACO CENTER FOR YOUTH**

Sec. 554.001. ADMISSION OF CERTAIN JUVENILES. (a) The department shall use the Waco Center for Youth as a residential treatment facility for emotionally disturbed juveniles who:

(1) have been admitted under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Department of Family and Protective Services and have been admitted under Subtitle C to the Waco Center for Youth.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.077, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 427 (S.B. 957), Sec. 1, eff. June 17, 2011.

Sec. 554.002. SERVICES. (a) The department shall provide without charge appropriate education services for all clients residing at the Waco Center for Youth.

(b) The department shall pay for those services from funds appropriated to the center for that purpose.

(c) A client of the center who is not a resident of the Waco Independent School District may receive education services from the Waco Independent School District only with the prior approval of the superintendent of the district.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

**CHAPTER 555. STATE SUPPORTED LIVING CENTERS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 555.001. DEFINITIONS. In this chapter:

(1) "Alleged offender resident" means a person with mental retardation who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-MR component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-MR component of the Rio Grande State Center.

(4) "Client" means a person with mental retardation who receives ICF-MR services from a state supported living center or the ICF-MR component of the Rio Grande State Center.

(5) "Commission" means the Health and Human Services Commission.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-MR component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human

Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with mental retardation who resides in a state supported living center or the ICF-MR component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTER. (a) The department shall establish a separate forensic state supported living center for the care apart from other clients and residents of high-risk alleged offender residents. The department shall designate the Mexia State Supported Living Center for this purpose.

(b) In establishing the forensic state supported living center, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to the forensic state supported living center;

(2) place high-risk alleged offender residents in separate homes at the forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age;  
or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in the forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other

than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from the forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of the forensic state supported living center.

(c) An alleged offender resident committed to the forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that the forensic state supported living center:

(1) complies with the requirements for ICF-MR certification under the Medicaid program, as appropriate; and

(2) has additional center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Youth Commission or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER



STATUS. (a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

- (1) the department;
- (2) the director of the state supported living center;
- (3) the independent ombudsman;
- (4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and
- (5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

#### **SUBCHAPTER B. POWERS AND DUTIES**

Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS. (a) The department, the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

(1) who is:

- (A) an applicant for employment with the agency;
- (B) an employee of the agency;
- (C) a volunteer with the agency;
- (D) an applicant for a volunteer position with the

agency;

- (E) an applicant for a contract with the agency; or
- (F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1027 (H.B. 2673), Sec. 10, eff. June 14, 2013.

Sec. 555.022. DRUG TESTING; POLICY. (a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

- (1) the uniqueness of the individuals the center employee

serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental retardation; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental retardation;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with mental retardation who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental retardation;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

- (1) prevention and management of aggressive or violent behavior;
- (2) observing and reporting changes in behavior, appearance, or health of residents and clients;
- (3) positive behavior support;
- (4) emergency response;
- (5) person-directed plans;
- (6) self-determination;
- (7) seizure safety;
- (8) techniques for:
  - (A) lifting;
  - (B) positioning; and
  - (C) movement and mobility;
- (9) working with aging residents and clients;
- (10) assisting residents and clients:
  - (A) who have a visual impairment;
  - (B) who have a hearing deficit; or
  - (C) who require the use of adaptive devices and specialized equipment;
- (11) communicating with residents and clients who use augmentative and alternative devices for communication;
- (12) assisting residents and clients with personal hygiene;
- (13) recognizing appropriate food textures;
- (14) using proper feeding techniques to assist residents and clients with meals;
- (15) physical and nutritional management plans; and
- (16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an intermediate care facility for persons with mental retardation licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with mental retardation to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or

training.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

- (1) a bedroom;
- (2) a bathroom;
- (3) a place in which a resident or client receives medical or nursing services;
- (4) a place in which a resident or client meets privately with visitors; or
- (5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-MR certification.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 1, eff. May 25, 2013.

#### **SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS**

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-MR component of

the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.052. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with mental retardation.

(c) A person appointed as independent ombudsman may be reappointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 573 (S.B. 747), Sec. 1, eff. June 14, 2013.

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen

only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with mental retardation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.055. CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.056. REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse,



neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation; or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-MR standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.059. DUTIES AND POWERS. (a) The independent ombudsman shall:

- (1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;
- (2) evaluate the delivery of services to residents and

clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-MR standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff.

June 11, 2009.

Sec. 555.060. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

#### **SUBCHAPTER D. INSPECTOR GENERAL DUTIES**

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

- (1) a summary of the activities performed during an investigation for which the inspector general provided assistance;
- (2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and
- (3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

- (1) executive commissioner;
- (2) commissioner of the department;
- (3) commissioner of the Department of Family and Protective Services;
- (4) Aging and Disability Services Council;
- (5) governor;
- (6) lieutenant governor;
- (7) speaker of the house of representatives;
- (8) standing committees of the senate and house of representatives with primary jurisdiction over centers;
- (9) state auditor;
- (10) the independent ombudsman and the assistant ombudsman for the center involved in the report; and
- (11) the alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the

inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of the department;

(3) commissioner of the Department of Family and Protective Services;

(4) Aging and Disability Services Council;

(5) Family and Protective Services Council;

(6) governor;

(7) lieutenant governor;

- (8) speaker of the house of representatives;
- (9) standing committees of the senate and house of representatives with primary jurisdiction over centers;
- (10) state auditor; and
- (11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.104. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

#### **SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM**

Sec. 555.151. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.



Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in a resident's room.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in a resident's room or in connection with using or disclosing a tape or recording made by the device except:

- (1) as specifically provided by this subchapter; or
- (2) to the extent that liability is affected by:
  - (A) a consent or waiver signed under this subchapter;

or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

- (1) an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or
- (2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

- (1) the placement and use of the device are not open and obvious; and
- (2) the center and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in a resident's room or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY

REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist centers, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

(1) release the center from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the executive commissioner, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 555.155(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the executive commissioner under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in a resident's room and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the center; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) A center shall permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) The center shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

- (1) all costs associated with installation of equipment;  
and  
(2) maintaining the equipment.

(g) A center may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.158. REPORTING ABUSE, NEGLECT, OR EXPLOITATION. (a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

- (1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and  
(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center shall post a notice at the entrance to the center stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.161. ENFORCEMENT. The department may impose appropriate sanctions under this chapter on a director of a center who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the center because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

## **SUBTITLE C. TEXAS MENTAL HEALTH CODE**

### **CHAPTER 571. GENERAL PROVISIONS**

Sec. 571.001. SHORT TITLE. This subtitle may be cited as the Texas Mental Health Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.



Sec. 571.002. PURPOSE. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

- (1) facilitating treatment in an appropriate setting;
- (2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;
- (3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;
- (4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;
- (5) defining the criteria the state must meet to order involuntary care and treatment;
- (6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;
- (7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and
- (8) safeguarding the rights of the person who voluntarily requests inpatient care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.003. DEFINITIONS. In this subtitle:

- (1) "Board" means the Texas Board of Mental Health and Mental Retardation.
- (2) "Commissioner" means the commissioner of mental health and mental retardation.
- (3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.
- (4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.
- (5) "Department" means the Texas Department of Mental Health and Mental Retardation.
- (6) "Facility administrator" means the individual in charge of a mental health facility.
- (7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat physically ill persons.
- (8) "Hospital administrator" means the individual in charge

of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the Texas Department of Health;

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11) "Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center;

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or

(D) with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health

authority, and the contracting state or local authority.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state; or

(E) a licensed marriage and family therapist licensed to practice in this state.

(16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide

authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 2, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 75, Sec. 1, eff. May 12, 1999; Acts 1999, 76th Leg., ch. 543, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 722, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 367, Sec. 4, 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. [1889](#)), Sec. 1, eff. September 1, 2013.

Sec. 571.004. LEAST RESTRICTIVE APPROPRIATE SETTING. The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

- (1) is available;
- (2) provides the patient with the greatest probability of improvement or cure; and
- (3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.005. TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM.

(a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or

programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.006. DEPARTMENT POWERS. The department may:

(1) adopt rules as necessary for the proper and efficient treatment of persons with mental illness;

(2) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(3) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(4) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(5) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.0065. TREATMENT METHODS. (a) The board by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the board.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the board.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(98), eff. June 17, 2011.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.01(a), eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 1, eff. May 27, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(14), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(98), eff. June 17, 2011.

Sec. 571.0066. PRESCRIPTION MEDICATION INFORMATION. (a) The board by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications;

and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.01, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 571.0065 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(32), eff. Sept. 1, 1995.

Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 6, eff.

September 1, 2005.

Sec. 571.007. DELEGATION OF POWERS AND DUTIES. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.008. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE. (a) The department may return a nonresident patient committed to a department mental health facility or other mental health facility under Section 571.0081 to the proper agency of the patient's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a mental health facility in another state.

(c) Subject to Section 571.0081, the department may enter into reciprocal agreements with the state or local authorities, as defined by Section 571.0081, of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient, unless the state agrees to share costs under a reciprocal agreement under Section 571.0081.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 2, eff. September 1, 2013.

Sec. 571.0081. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE; RECIPROCAL AGREEMENTS. (a) In this section, "state or local authority" means a state or local government authority or agency or a representative of a state or local government authority or agency acting in an official capacity.

(b) If a state or local authority of another state petitions the department, the department shall enter into a reciprocal agreement with the state or local authority to facilitate the return of persons committed to mental health facilities in this state to the state of their residence unless the department determines that the terms of the agreement are not acceptable.

(c) A reciprocal agreement entered into by the department under Subsection (b) must require the department to develop a process for returning persons committed to mental health facilities to their state of residence. The process must:

(1) provide suitable care for the person committed to a mental health facility;

(2) use available resources efficiently; and

(3) consider commitment to a proximate mental health facility to facilitate the return of the committed patient to the patient's state of residence.

(d) For the purpose of this section, the department shall coordinate, as appropriate, with a mental health facility, a mental hospital, health service providers, courts, and law enforcement personnel located in the geographic area nearest the petitioning state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 3, eff. September 1, 2013.

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, senility, alcoholism, or mental deficiency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.



Sec. 571.010. AGENT FOR SERVICE OF PROCESS. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 35, Sec. 9, eff. Jan. 1, 2004.

Sec. 571.012. COURT HOURS; AVAILABILITY OF JUDGE OR MAGISTRATE. The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 485, Sec. 1, eff. June 11, 2001.

Sec. 571.013. METHOD OF GIVING NOTICE. Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.014. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

- (1) the date on which the paper is filed;
- (2) the docket number; and
- (3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this subtitle would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this subtitle requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.42, eff. Aug. 30, 1993.

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.016. REPRESENTATION OF STATE. Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

- (1) the county attorney shall represent the state; or
- (2) if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 322, Sec. 1, eff. Aug. 28, 1995;  
Acts 1995, 74th Leg., ch. 770, Sec. 1, eff. June 16, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. [3342](#)), Sec. 1, eff. June 17, 2011.

Sec. 571.0165. EXTENSION OF DETENTION PERIOD. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.43, eff. Aug. 30, 1993.

Sec. 571.0166. PROCEEDINGS ON BEHALF OF THE STATE. All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

Added by Acts 1995, 74th Leg., ch. 770, Sec. 2, eff. June 16, 1995.

Sec. 571.0167. HABEAS CORPUS PROCEEDINGS. (a) A petition for a writ of habeas corpus arising from a commitment order must be filed

in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a state inpatient mental health facility or a physician employed by a state inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. 3342), Sec. 2, eff. June 17, 2011.

Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b) The compensation paid shall be taxed as costs in the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 2, eff. September 1, 2009.

Sec. 571.018. COSTS. (a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1) the county that initiates emergency detention procedures under Subchapter A or B, Chapter 573; or

(2) if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b) The county responsible for the costs of a hearing or proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The costs shall be

billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-appointed personnel listed under Section 571.017;

(4) expenses of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(5) costs and salary supplements authorized under Sections 574.031(i) and (j); and

(6) prosecutor's fees authorized under Section 574.031(k).

(d) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the patient; or

(2) a person or estate liable for the patient's support in a department mental health facility.

(e) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h) The state or a county may not pay any costs for a patient committed to a private mental hospital unless:

(1) a public facility is not available; and

(2) the commissioners court of the county authorizes the payment, if appropriate.

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or

(2) the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j) When an inpatient mental health facility as defined under Section 571.003(9)(B) or (E) files an affidavit with the clerk of the court certifying that it has received no compensation or reimbursement for the treatment of a person for whom court costs have been paid or advanced, the judge of the probate court shall order the clerk of the court to refund the costs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.44, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 174, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 3, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 527, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1512, Sec. 1, eff. Sept. 1, 1999.

Sec. 571.019. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.020. CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than \$50 or more than \$25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than \$500 or more than \$100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$100 or more than \$50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than \$1,000 or more than \$200,000 for each violation and each day of a continuing violation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.45, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.10(a), eff. Sept. 1, 1993.

Sec. 571.021. ENFORCEMENT OFFICERS. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.



Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.022. INJUNCTION. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.023. CIVIL PENALTY. (a) A person is subject to a civil penalty of not more than \$25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this subtitle. In determining the amount of the civil penalty, the court shall consider:

- (1) the person's or facility's previous violations;
  - (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
  - (3) whether the health and safety of the public was threatened by the violation;
  - (4) the demonstrated good faith of the person or facility;
- and
- (5) the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or
- (2) file a suit to assess and recover civil penalties

independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.024. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.025. ADMINISTRATIVE PENALTY. (a) The board may

impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely

to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1,

1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 571.026. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.111, eff. Sept. 1, 1993.

Sec. 571.027. ADVISORY COMMITTEE ON INPATIENT MENTAL HEALTH SERVICES. (a) The board shall appoint an advisory committee on inpatient mental health services to advise the board on:

(1) issues and policies related to the provision of mental health services in a facility described by Section 571.003(9)(B) or (E);

(2) coordination and communication between the department, the Texas Department of Health, and facilities described by Section 571.003(9)(B) or (E) to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and

(3) training for inpatient mental health facility surveyors or investigators.

(b) The board shall appoint to the committee:

(1) three representatives of hospitals, at least two of whom represent a facility described by Section 571.003(9)(B) or (E);

(2) three consumers of mental health services, each of whom has received treatment in a facility described by Section 571.003(9)(B) or (E);

(3) two physicians licensed under Subtitle B, Title 3, Occupations Code, who practice psychiatry and are board certified in psychiatry, at least one of whom is board certified in child and adolescent psychiatry; and

(4) one family member of a person who has been a consumer

of mental health services provided by a facility described by Section 571.003(9)(B) or (E).

(c) The Texas Board of Health shall provide the advisory committee with two persons to represent the Texas Department of Health. The representatives may address the advisory committee on any issue relevant to a matter before the advisory committee, but the representatives may not vote on any matter. The Texas Board of Health shall consider designating an inpatient mental health facility surveyor or investigator to be a representative under this subsection.

(d) Except for persons who represent the Texas Department of Health designated under Subsection (c), members of the advisory committee serve staggered four-year terms. A member's term expires on August 31 of the fourth year following the member's appointment.

(e) The board shall fill vacancies on the board in the same manner as the original appointment.

(f) The committee shall meet not fewer than four times each calendar year.

(g) Section 2110.008, Government Code, does not apply to the advisory committee.

Added by Acts 1997, 75th Leg., ch. 1027, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 745, Sec. 1, eff. June 13, 2001;  
Acts 2001, 77th Leg., ch. 1420, Sec. 14.803, eff. Sept. 1, 2001.

#### **CHAPTER 572. VOLUNTARY MENTAL HEALTH SERVICES**

Sec. 572.001. REQUEST FOR ADMISSION. (a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) Except as provided by Subsection (c), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent,

managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age only with the person's consent. If the person does not consent, the person may be admitted for inpatient services only pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, other state law, or department rule.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

- (1) the person's discharge; or
- (2) the period prescribed by Section 572.004.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 4.01, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 393, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1000, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 2, eff. June 14, 2013.

Sec. 572.002. ADMISSION. The facility administrator or the administrator's authorized, qualified designee may admit a person for



whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is 16 years of age or older; or

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 393, Sec. 2, eff. Aug. 28, 1995;

Acts 2003, 78th Leg., ch. 1000, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 3, eff. June 14, 2013.

Sec. 572.0022. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.03, eff. May 1, 1994.

Amended by Acts 1997, 75th Leg., ch. 337, Sec. 2, eff. May 27, 1997.

Sec. 572.0025. INTAKE, ASSESSMENT, AND ADMISSION. (a) The board shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

- (1) reviewing a prospective patient's finances and insurance benefits;
- (2) explaining to a prospective patient the patient's rights; and
- (3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by board rules.

(d) The rules governing the assessment process shall prescribe:

- (1) the types of professionals who may conduct an assessment;
- (2) the minimum credentials each type of professional must have to conduct an assessment; and
- (3) the type of assessment that professional may conduct.

(e) In accordance with board rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within 72 hours of the admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within 72 hours of the admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and

has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.03, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 422, Sec. 1, eff. June 9, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.83, eff. Sept. 1, 2003.

Sec. 572.003. RIGHTS OF PATIENTS. (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

(1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and

(2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's

primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The department by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 3, eff. June 20, 2003.

Sec. 572.004. DISCHARGE. (a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1) a written withdrawal of the request for discharge is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within

24 hours after the patient is discharged.

(h) The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.46, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. [224](#)), Sec. 1, eff. May 17, 2005.

Sec. 572.005. APPLICATION FOR COURT-ORDERED TREATMENT. (a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1) a request for release of the patient has been filed with the facility administrator; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered mental health services and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary psychiatric treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.04, eff. Aug. 30, 1993.

Sec. 572.0051. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 4, eff. June 14, 2013.

#### **CHAPTER 573. EMERGENCY DETENTION**

##### **SUBCHAPTER A. APPREHENSION BY PEACE OFFICER OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN**

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is mentally ill; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets

the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

Text of subsection as added by Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 1

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

Text of subsection as added by Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 1

(g) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 367, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 1, eff. September 1, 2013.



Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF DETENTION. (a) A peace officer shall immediately file with a facility a notification of detention after transporting a person to that facility in accordance with Section 573.001.

(b) The notification of detention must contain:

- (1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;
- (2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;
- (3) a specific description of the risk of harm;
- (4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
- (5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;
- (6) a detailed description of the specific behavior, acts, attempts, or threats; and
- (7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person's clinical file the notification of detention described by this section.

(d) The peace officer shall give the notification of detention on the following form:

Notification--Emergency Detention NO. \_\_\_\_\_  
DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

THE STATE OF TEXAS  
FOR THE BEST INTEREST AND PROTECTION OF:

\_\_\_\_\_

NOTIFICATION OF EMERGENCY DETENTION

Now comes \_\_\_\_\_, a peace officer with (name of agency) \_\_\_\_\_, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained) \_\_\_\_\_ evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the above reasons, I present this notification to seek temporary admission to the (name of facility) \_\_\_\_\_ inpatient mental health facility or hospital facility for the detention of (name of person to be detained)

\_\_\_\_\_ on an emergency basis.

6. Was the person restrained in any way? Yes No

\_\_\_\_\_ BADGE NO. \_\_\_\_\_  
PEACE OFFICER'S SIGNATURE

Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

A mental health facility or hospital emergency department may not require a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained under Section 573.001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 2, eff. September 1, 2013.

Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN. (a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is mentally ill; and

(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(b) A substantial risk of serious harm to the ward or others under Subsection (a)(2) may be demonstrated by:

(1) the ward's behavior; or

(2) evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.

## Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION.

(a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;

(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;

(3) a specific description of the risk of harm;

(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;

(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.

**SUBCHAPTER B. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY  
APPREHENSION AND DETENTION**

Sec. 573.011. APPLICATION FOR EMERGENCY DETENTION. (a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 573.012. ISSUANCE OF WARRANT. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot

remain at liberty.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic

communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable

legal signature of the judge or magistrate is transmitted with the document.

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.19, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 3, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS**

Sec. 573.021. PRELIMINARY EXAMINATION. (a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer files a notification of detention under Section 573.002(a).

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each

day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 623, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 692, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 333 (H.B. 888), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 3, eff. September 1, 2013.

Sec. 573.022. EMERGENCY ADMISSION AND DETENTION. (a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1) is acceptable to the facility;

(2) states that after a preliminary examination it is the physician's opinion that:

(A) the person is mentally ill;

(B) the person evidences a substantial risk of serious harm to himself or others;

(C) the described risk of harm is imminent unless the person is immediately restrained; and

(D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and



(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 842, Sec. 1, eff. June 18, 1999;  
Acts 2001, 77th Leg., ch. 367, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 2, eff. September 1, 2011.

Sec. 573.023. RELEASE FROM EMERGENCY DETENTION. (a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(2) no longer applies.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 692, Sec. 8, eff. Sept. 1, 2003.

Sec. 573.024. TRANSPORTATION AFTER RELEASE. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 692, Sec. 9, eff. Sept. 1, 2003.

Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION. (a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;

(4) to be released from a facility as provided by Section 573.023;

(5) to be advised that communications with a mental health professional may be used in proceedings for further detention;

(6) to be transported in accordance with Sections 573.026

and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner of the Health and Human Services Commission by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 692, Sec. 10, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 4, eff. September 1, 2013.

Sec. 573.026. TRANSPORTATION AFTER DETENTION. A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

Added by Acts 1999, 76th Leg., ch. 1512, Sec. 3, eff. Sept. 1, 1999.

## **CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES**

### **SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES**

Sec. 574.001. APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 770, Sec. 4, eff. June 16, 1995;

Acts 1997, 75th Leg., ch. 1086, Sec. 38, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 35, Sec. 10, eff. Jan. 1, 2004.

Sec. 574.002. FORM OF APPLICATION. (a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of

Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is mentally ill and meets the criteria in Section 574.034 or 574.035 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 35, Sec. 11, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 166 (S.B. 118), Sec. 2, eff. September 1, 2011.

Sec. 574.003. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.004. DUTIES OF ATTORNEY. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

- (1) the application is dismissed;
- (2) an appeal from an order directing treatment is taken;
- (3) the time for giving notice of appeal expires by operation of law; or
- (4) another attorney assumes responsibility for the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.005. SETTING ON APPLICATION. (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.006. NOTICE. (a) The proposed patient and his attorney are entitled to receive a copy of the application and

written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

- (1) parent, if the proposed patient is a minor;
- (2) appointed guardian, if the proposed patient is the subject of a guardianship; or
- (3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any material issue, without regard to whether such evidence is on behalf of the state or of the proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 623, Sec. 1, eff. Aug. 28, 1995.

Sec. 574.007. DISCLOSURE OF INFORMATION. (a) The proposed



patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;

(2) the reasons voluntary outpatient services are not considered appropriate for the proposed patient;

(3) the name, address, and telephone number of each witness who may testify at the hearing;

(4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and

(5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

(1) orally and in the presence of the court; or

(2) in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.008. COURT JURISDICTION AND TRANSFER. (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended inpatient mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 770, Sec. 5, eff. June 16, 1995.

Sec. 574.0085. ASSOCIATE JUDGES. (a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to

practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioners court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioners courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation

on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(l) An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.47, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.45, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 3, eff. September 1, 2009.

Sec. 574.009. REQUIREMENT OF MEDICAL EXAMINATION. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge

shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for mental illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.48, eff. Aug. 30, 1993.

Sec. 574.010. INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.011. CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

- (1) the name and address of the examining physician;
- (2) the name and address of the person examined;
- (3) the date and place of the examination;
- (4) a brief diagnosis of the examined person's physical and mental condition;
- (5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined person is mentally ill; and

(B) as a result of that illness the examined person is likely to cause serious harm to himself or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of his ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 2, eff. Sept. 1, 1997.

Sec. 574.012. RECOMMENDATION FOR TREATMENT. (a) The local mental health authority in the county in which an application is

filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 3, eff. Sept. 1, 1997;  
Acts 2001, 77th Leg., ch. 367, Sec. 8, eff. Sept. 1, 2001.

Sec. 574.0125. IDENTIFICATION OF PERSON RESPONSIBLE FOR COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge intends to designate to be responsible for those services under Section 574.037.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 1, eff. September 1, 2013.

Sec. 574.013. LIBERTY PENDING HEARING. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

## Sec. 574.014. COMPILATION OF MENTAL HEALTH COMMITMENT RECORDS.

(a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Office of Court Administration shall make the reported information available to the department annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

Added by Acts 1997, 75th Leg., ch. 744, Sec. 4, eff. Sept. 1, 1997.

**SUBCHAPTER B. PROTECTIVE CUSTODY**

Sec. 574.021. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate



of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1278, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 2, eff. September 1, 2007.

Sec. 574.022. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill; and

(2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.023. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 9, eff. Sept. 1, 2001.

Sec. 574.024. APPOINTMENT OF ATTORNEY. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

- (1) that the proposed patient has been placed under a protective custody order;
- (2) the grounds for the order; and
- (3) the time and place of the hearing to determine probable cause.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.025. PROBABLE CAUSE HEARING. (a) A hearing must be

held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that he cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the associate judge serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 101, Sec. 1, eff. May 16, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 4, eff. September 1, 2009.

Sec. 574.026. ORDER FOR CONTINUED DETENTION. (a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney \_\_\_\_\_ have been  
(attorney)

given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on

\_\_\_\_\_.  
(date of notice)

I have examined the certificate of medical examination for mental illness and \_\_\_\_\_. Based on  
(other evidence considered)

this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself (yes \_\_\_ or no \_\_\_) or others (yes \_\_\_ or no \_\_\_) such that

(s)he cannot be at liberty pending final hearing because

---

(reasons for finding; type of risk found)

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 5, eff. September 1, 2009.

Sec. 574.027. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

(e) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 10, 19, eff. Sept. 1, 2001.

Sec. 574.028. RELEASE FROM DETENTION. (a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 6, eff. September 1, 2009.

#### **SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES**

Sec. 574.031. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in

the county courthouse.

(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(e) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018.

(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health

proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1354, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 10.006, eff. Sept. 1, 2001.

Sec. 574.032. RIGHT TO JURY. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) In a hearing before a jury, the jury shall determine if the proposed patient is mentally ill and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.033. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is mentally ill and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.



Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.034. ORDER FOR TEMPORARY MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

- (1) the proposed patient is mentally ill; and
- (2) as a result of that mental illness the proposed

patient:

- (A) is likely to cause serious harm to himself;
- (B) is likely to cause serious harm to others; or
- (C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

- (A) the proposed patient is mentally ill;
- (B) the nature of the mental illness is severe and

persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(e) To be clear and convincing under Subdivision (b)(2), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the proposed patient's distress;

(2) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(f) The proposed patient and the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient and the proposed patient's attorney do not waive in writing

the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony. In addition, the court may consider the testimony of a nonphysician mental health professional as provided by Section 574.031(f).

(g) An order for temporary inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 90 days. The order may not specify a shorter period.

(h) A judge may not issue an order for temporary inpatient or outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.49, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 744, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff. September 1, 2013.

Sec. 574.035. ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

- (1) the proposed patient is mentally ill;
- (2) as a result of that mental illness the proposed patient:
  - (A) is likely to cause serious harm to himself;
  - (B) is likely to cause serious harm to others; or
  - (C) is:
    - (i) suffering severe and abnormal mental, emotional, or physical distress;
    - (ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's

inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the patient; and

(2) the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:

(A) the proposed patient is mentally ill;

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) or (b)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(f) To be clear and convincing under Subdivision (b)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the proposed patient's distress;

(2) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(g) The court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(h) An order for extended inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(i) A judge may not issue an order for extended inpatient or

outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 770, Sec. 8, eff. June 16, 1995;  
Acts 1997, 75th Leg., ch. 312, Sec. 5, eff. Sept. 1, 1997; Acts  
1997, 75th Leg., ch. 744, Sec. 6, eff. Sept. 1, 1997; Acts 1999,  
76th Leg., ch. 238, Sec. 1, eff. May 28, 1999; Acts 2003, 78th Leg.,  
ch. 35, Sec. 12, eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 166 (S.B. 118), Sec. 1, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff.  
September 1, 2013.

Sec. 574.036. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be mentally ill and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a);  
or

(2) committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(b) or 574.035(b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 7, eff. Sept. 1, 1997.

Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as responsible for those services or may designate a different person if necessary. The person designated must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located.

(b) The person responsible for the services shall submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.034 or 574.035 or before the court modifies an order under Section 574.061, as appropriate.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

(2) any substantial change in the general program of treatment that occurs before the order expires.

(c-1) A patient subject to court-ordered outpatient services

may petition the court for specific enforcement of the court order.

(c-2) A court may, on its own motion, set a status conference with the person responsible for the services, the patient, and the patient's attorney.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 2, eff. September 1, 2013.

#### **SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT**

Sec. 574.041. DESIGNATION OF FACILITY. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health authority for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health



facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 543, Sec. 3, eff. June 18, 1999;  
Acts 2001, 77th Leg., ch. 367, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.108, eff. September 1, 2009.

Sec. 574.0415. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.05, eff. May 1, 1994.

Amended by Acts 1997, 75th Leg., ch. 337, Sec. 3, eff. May 27, 1997.

Sec. 574.042. COMMITMENT TO PRIVATE FACILITY. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.043. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 12, eff. Sept. 1, 2001.

Sec. 574.044. COMMITMENT TO FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. The court shall commit an inmate patient to an inpatient mental health facility of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist under Section 501.057, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.50, eff. Aug. 30, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.109, eff. September 1, 2009.

Sec. 574.045. TRANSPORTATION OF PATIENT. (a) The court may authorize, in the following order of priority, the transportation of

a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

- (1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;
- (2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;
- (3) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;
- (4) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located;
- (5) the sheriff or constable; or
- (6) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses.

(a-1) A person who under Subsection (a)(1), (2), or (5) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient's physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.20, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 60, Sec. 20, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1512, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.804, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 1, eff. September 1, 2013.

Sec. 574.0455. LIST OF QUALIFIED TRANSPORTATION SERVICE PROVIDERS. (a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be

deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The Department of State Health Services shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 2, eff. September 1, 2011.

Sec. 574.0456. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 2, eff. September 1, 2013.

Sec. 574.046. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.047. TRANSCRIPT. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.048. ACKNOWLEDGMENT OF PATIENT DELIVERY. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS**

Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

(a) The facility administrator of a facility to which a patient is committed for inpatient mental health services may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient mental health services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the request.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as

prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall designate a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may not extend beyond the term of the original order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 3, eff. September 1, 2013.

Sec. 574.062. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the

motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.063. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1) the patient meets the criteria described by Section 574.064(a-1); and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.



Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 4, eff. September 1, 2013.

Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(a-1) A physician shall evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). The determination that the patient presents a substantial risk of serious harm to the patient or others may be demonstrated by:

(1) the patient's behavior; or

(2) evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours,

excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1) after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2) after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 191, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 367, Sec. 13, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 7, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 5, eff. September 1, 2013.

Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 6, eff. September 1, 2013.

Sec. 574.066. RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which

the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.067. MOTION FOR REHEARING. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.068. REQUEST FOR REEXAMINATION. (a) A patient

receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

- (1) require that the patient be reexamined;
- (2) schedule a hearing on the request; and
- (3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.069. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

- (1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.070. APPEAL. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody

before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

**SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED  
MENTAL HEALTH SERVICES**

Sec. 574.081. CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE. (a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(b) The physician shall prepare the plan as prescribed by department rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for sufficient medication on furlough or discharge to last until the patient can see a physician; and

(2) the person or entity that is responsible for providing and paying for the medication.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services;  
or

(B) any other provider that agrees to accept the

referral; and

(2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 12, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.04, 4.05, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(33), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 14, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1066, Sec. 1, eff. Sept. 1, 2001.

Sec. 574.082. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.083. RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER. (a) The facility administrator of a



facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate issued or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient

to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 2001.

Sec. 574.084. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the

patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.085. DISCHARGE ON EXPIRATION OF COURT ORDER. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.086. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1) a furlough under Section 574.082; or

(2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.087. CERTIFICATE OF DISCHARGE. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES.

(a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
- (2) the person's mental history;
- (3) the person's criminal history; and
- (4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

- (1) the person is no longer likely to act in a manner dangerous to public safety; and
- (2) removing the person's disability to purchase a firearm is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 950 (H.B. 3352), Sec. 2, eff. September 1, 2009.

Sec. 574.089. TRANSPORTATION PLAN FOR FURLOUGH OR DISCHARGE.

(a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

- (1) who is responsible for transporting the person;
- (2) when the person will be transported; and
- (3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

Added by Acts 2009, 81st Leg., R.S., Ch. 1020 (H.B. 4276), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT ORDER FOR MENTAL HEALTH SERVICES**

Sec. 574.101. DEFINITIONS. In this subchapter:

- (1) "Capacity" means a patient's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness.

"Psychoactive medication" includes the following categories when used as described in this subdivision:

- (A) antipsychotics or neuroleptics;
- (B) antidepressants;
- (C) agents for control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993.

Sec. 574.102. APPLICATION OF SUBCHAPTER. This subchapter applies to the application of medication to a patient subject to a court order for mental health services under this chapter or other law.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 9, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 1, eff. June 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 8, eff. September 1, 2013.

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES. (a) In this section, "ward" has the meaning assigned by Section 601, Texas Probate Code.

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

- (1) the patient is having a medication-related emergency;
- (2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or
- (3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive

medication.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 692, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 9, eff. September 1, 2013.

Sec. 574.104. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the patient;

(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed for the patient; and

(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the patient to take;

(3) whether an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed;

(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the patient; and

(6) the proposed method for administering the medication

and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034 or 574.035 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under Section 574.034 or 574.035 and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 2, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 10, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 2, eff. June 17, 2005.

Sec. 574.105. RIGHTS OF PATIENT. A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

- (1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;
- (2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;
- (3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;



(4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 11, eff. June 16, 1995.

Sec. 574.106. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is under a court order to receive inpatient mental health services; or

(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional

facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the

proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

(l) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 12, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 3, eff. June 17,

2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 4, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 1, eff. June 19, 2009.

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In making a finding under Section 574.106(a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

Added by Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 5, eff. June 17, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 2, eff. June 19, 2009.

Sec. 574.107. COSTS. (a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

(1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or

(2) a patient who:

(A) is awaiting trial after having been determined to be competent to stand trial; and

(B) was ordered to receive mental health services as described by Section 574.106(a)(2).

Added by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 20, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 3, eff. June 19, 2009.

Sec. 574.108. APPEAL. (a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.107 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.109. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.108 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.110. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.109 and amended by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 6, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 5, eff. September 1, 2011.

#### **SUBCHAPTER H. VOLUNTARY ADMISSION FOR CERTAIN PERSONS FOR WHOM MOTION FOR COURT-ORDERED SERVICES HAS BEEN FILED**

Sec. 574.151. APPLICABILITY. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034 or 574.035, and who requests voluntary admission to an inpatient mental health facility:

(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.152. CAPACITY TO CONSENT TO VOLUNTARY ADMISSION. A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.153. RIGHTS OF PERSON ADMITTED TO VOLUNTARY INPATIENT TREATMENT. (a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.154. PARTICIPATION IN RESEARCH PROGRAM. Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and

(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

#### **SUBCHAPTER I. USE OF VIDEO TECHNOLOGY AT PROCEEDINGS**

Sec. 574.201. APPLICATION OF SUBCHAPTER. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.202. CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.203. USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit



television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

- (1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:
    - (A) the proposed patient or the attorney representing the proposed patient; and
    - (B) the county or district attorney, as appropriate;
  - (2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge or associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and
  - (3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge or associate judge or by the county or district attorney.
- (b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.
- (c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 9, eff. September 1, 2009.

## **CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES**

**SUBCHAPTER A. ADMISSION PROCEDURES**

Sec. 575.001. AUTHORIZATION FOR ADMISSION. (a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.002. ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL. This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.003. ADMISSION OF ALCOHOLICS AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This subtitle does not affect the admission to a state mental health facility of:

- (1) an alcoholic admitted under Chapter 462; or
- (2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 35, Sec. 13, eff. Jan. 1, 2004.

**SUBCHAPTER B. TRANSFER PROCEDURES**

Sec. 575.011. TRANSFER TO DEPARTMENT MENTAL HEALTH FACILITY OR LOCAL MENTAL HEALTH AUTHORITY. (a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

- (1) another inpatient mental health facility operated by the department; or
- (2) a mental health facility deemed suitable by the local mental health authority if the authority consents.

(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 16, eff. Sept. 1, 2001.

Sec. 575.012. TRANSFER OF PERSON WITH MENTAL RETARDATION TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental health facility may not transfer a patient who is also a person with mental retardation to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for persons with mental retardation who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 17, eff. Sept. 1, 2001.

Sec. 575.013. TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL. (a) The facility administrator of an inpatient mental

health facility operated by the department may transfer an involuntary patient in the facility to a state school for persons with mental retardation if an examination of the patient indicates that the patient has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school are in the patient's best interest.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state school shall be furnished to the committing court.

(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 18, eff. Sept. 1, 2001.

Sec. 575.014. TRANSFER TO PRIVATE MENTAL HOSPITAL. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;

(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3) written notice of the transfer is sent to the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.015. TRANSFER TO FEDERAL FACILITY. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

- (2) notice of the transfer is sent to the committing court;  
and
- (3) the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.016. TRANSFER FROM FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. (a) The Texas Department of Criminal Justice shall transfer a patient committed to an inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.110, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.111, eff. September 1, 2009.

Sec. 575.017. TRANSFER OF RECORDS. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state school to which the patient is transferred.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

**CHAPTER 576. RIGHTS OF PATIENTS**  
**SUBCHAPTER A. GENERAL RIGHTS**

Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

- (1) the right to register and vote at an election;
- (2) the right to acquire, use, and dispose of property, including contractual rights;
- (3) the right to sue and be sued;
- (4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;
- (5) the right to religious freedom; and
- (6) all rights relating to domestic relations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.002. PRESUMPTION OF COMPETENCY. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Texas Probate Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 2, eff. June 16, 2001.

Sec. 576.003. WRIT OF HABEAS CORPUS. A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 994 (H.B. 2096), Sec. 1, eff. June 17, 2011.

Sec. 576.004. EFFECT ON GUARDIANSHIP. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.005. CONFIDENTIALITY OF RECORDS. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 1007, Sec. 1, eff. June 19, 1993; Acts 1997, 75th Leg., ch. 481, Sec. 1, eff. Sept. 1, 1997.

Sec. 576.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 1, eff. May 27, 2003.

Sec. 576.006. RIGHTS SUBJECT TO LIMITATION. (a) A patient in an inpatient mental health facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 576.007. NOTIFICATION OF RELEASE. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).



Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.51, eff. Aug. 30,  
1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.06, eff. Aug. 30, 1993.

Sec. 576.009. NOTIFICATION OF RIGHTS. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.07, eff. Aug. 30,  
1993.

Sec. 576.010. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 1, eff. June 19, 2009.

**SUBCHAPTER B. RIGHTS RELATING TO TREATMENT**

Sec. 576.021. GENERAL RIGHTS RELATING TO TREATMENT. (a) A patient receiving mental health services under this subtitle has the right to:

- (1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;
- (2) not receive unnecessary or excessive medication;
- (3) refuse to participate in a research program;
- (4) an individualized treatment plan and to participate in developing the plan; and
- (5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 3, eff. June 16, 2001.

Sec. 576.022. ADEQUACY OF TREATMENT. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.023. PERIODIC EXAMINATION. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.024. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.025. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format

approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 14, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. 224), Sec. 2, eff. May 17, 2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 7, eff. June 17, 2005.

Sec. 576.026. INDEPENDENT EVALUATION. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who

performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 576.027. LIST OF MEDICATIONS. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

- (1) the name of the medication;
- (2) the dosage and schedule prescribed for the administration of the medication; and
- (3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.10, eff. Aug. 30, 1993.

## **CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES**

Sec. 577.001. LICENSE REQUIRED. (a) A person or political

subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the Texas Department of Mental Health and Mental Retardation to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.02, eff. Sept. 1, 1993.

Sec. 577.0011. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 4.03, eff. Sept. 1, 1993.

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A mental health facility operated by the Texas Department of Mental Health and Mental Retardation or a federal agency need not be licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the Texas Department of Mental Health and Mental Retardation designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.004. LICENSE APPLICATION. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility; and

(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate



a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.006. FEES. (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b) The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule under which the number of beds in the hospital determines the amount of the fee. The fee may not exceed \$15 a bed. A minimum license fee may be established. The minimum fee may not exceed \$1,000.

(c) The board by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) The fees imposed under the schedule may not exceed the following:

Cost of Construction	Fee
(1) \$ 100,000 or less	\$ 500
(2) \$ 100,001 - \$ 600,000	\$1,500
(3) \$ 600,001 - \$ 2,000,000	\$3,000
(4) \$ 2,000,001 - \$ 5,000,000	\$4,500
(5) \$ 5,000,001 - \$10,000,000	\$6,000
(6) \$ 10,000,001 and over	\$7,500

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of \$500 and a maximum fee of \$1,000 for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The department may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the

estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. These fees may be appropriated only to the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 8.01, eff. Sept. 1, 1999.

Sec. 577.007. CHANGE IN BED CAPACITY. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the Texas Department of Mental Health and Mental Retardation designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.010. RULES AND STANDARDS. (a) The Texas Board of Mental Health and Mental Retardation shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.05, eff. Sept. 1, 1993.

Sec. 577.0101. NOTIFICATION OF TRANSFER OR REFERRAL. (a) The board shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.07, eff. Aug. 30, 1993.

Sec. 577.011. RECORDS AND REPORTS. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.012. DESTRUCTION OF RECORDS. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.013. INVESTIGATIONS. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

- (1) inspect the facilities and conditions;
- (2) observe the hospital's or facility's care and treatment program; and
- (3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are

confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the department in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

(1) a notice of alleged violation against the licensed mental hospital, which notice shall include the provisions of law which the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the pleadings in the administrative proceeding; and

(3) a final decision or order by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1444, Sec. 16, eff. Aug. 30, 1999.

Sec. 577.014. OATHS. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.015. SUBPOENAS. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this

state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.016. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

- (1) department rules;
- (2) this subtitle; or
- (3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the

probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.12, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 802, Sec. 14, 15, eff. June 20, 2003.

Sec. 577.017. HEARINGS. (a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.13, eff. Sept. 1, 1993.

#### **CHAPTER 578. ELECTROCONVULSIVE AND OTHER THERAPIES**

Sec. 578.001. APPLICATION. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.002. USE OF ELECTROCONVULSIVE THERAPY. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:



(1) a person who is 16 years of age or older and who is voluntarily receiving mental health services; or

(2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01.

Sec. 578.003. CONSENT TO THERAPY. (a) The board by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The board by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the board shall consider recommendations of the panel. Use of the consent form prescribed by the board in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment,

the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1323, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 137 (H.B. 740), Sec. 1, eff. September 1, 2005.

Sec. 578.004. WITHDRAWAL OF CONSENT. (a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.005. PHYSICIAN REQUIREMENT. (a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.805, eff. Sept. 1, 2001.

Sec. 578.006. REGISTRATION OF EQUIPMENT. (a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by the department.

(c) The application must be accompanied by a nonrefundable application fee. The board shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by the department.

(e) The department may conduct an investigation as considered

necessary after receiving the proper application and the required fee.

(f) The board by rule may prohibit the registration and use of equipment of a type, model, or age the board determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 578.007. REPORTS. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses,

incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by the department.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.008. USE OF INFORMATION; REPORT. (a) The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

**For expiration of this chapter, see Section 579.010.**

**CHAPTER 579. MENTAL HEALTH JAIL DIVERSION PILOT PROGRAM; HARRIS COUNTY**

Sec. 579.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of the department.

(2) "County judge" means the county judge of Harris County.

(3) "Department" means the Department of State Health Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. [1185](#)), Sec. 1, eff. June 14, 2013.

Sec. 579.002. MENTAL HEALTH JAIL DIVERSION PILOT PROGRAM. The department, in cooperation with the county judge, shall establish a pilot program in Harris County to be implemented by the county judge for the purpose of reducing recidivism and the frequency of arrests and incarceration among persons with mental illness in that county.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. 1185), Sec. 1, eff. June 14, 2013.

Sec. 579.003. CRIMINAL JUSTICE MENTAL HEALTH SERVICE MODEL. The county judge shall design and test through the pilot program a criminal justice mental health service model oriented toward reducing the recidivism and frequency of arrests and incarceration of persons with mental illness in the Harris County jail. The model initially must apply the critical time intervention principle described by Section 579.004 and must include the following elements:

- (1) low caseload management;
- (2) multilevel residential services; and
- (3) easy access to:
  - (A) integrated health, mental health, and chemical dependency services;
  - (B) benefits acquisition services; and
  - (C) multiple rehabilitation services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. 1185), Sec. 1, eff. June 14, 2013.

Sec. 579.004. CRITICAL TIME INTERVENTION. The pilot program, in applying the critical time intervention principle, must give persons with mental illness access to available social, clinical, housing, and welfare services during the first weeks after the person's release from jail.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. 1185), Sec. 1, eff. June 14, 2013.

Sec. 579.005. LOCAL SERVICES COORDINATION. In designing the criminal justice mental health service model the county judge shall

seek input from and coordinate the provision of services with the following local entities:

- (1) the Harris County Sheriff's Office;
  - (2) the mental health division of the office of the district attorney of Harris County;
  - (3) the Harris County public defender;
  - (4) mental health courts;
  - (5) specially trained law enforcement crisis intervention teams and crisis intervention response teams;
  - (6) providers of competency restoration services;
  - (7) providers of guardianship services;
  - (8) providers of forensic case management;
  - (9) providers of assertive community treatment;
  - (10) providers of crisis stabilization services;
  - (11) providers of intensive and general supportive housing;
- and
- (12) providers of integrated mental health and substance abuse inpatient, outpatient, and rehabilitation services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. [1185](#)), Sec. 1, eff. June 14, 2013.

Sec. 579.006. PROGRAM CAPACITY. (a) In implementing the pilot program, the county judge shall ensure the program has the resources to provide mental health jail diversion services to not fewer than 200 individuals.

(b) The county judge shall endeavor to serve each year the program operates not fewer than 500 or more than 600 individuals cumulatively.

(c) Before the county judge implements the pilot program, the department and the county judge jointly shall establish clear criteria for identifying a target population to be served by the program. The criteria must prioritize serving a target population composed of members with the highest risks of recidivism and the most severe mental illnesses. The county judge, in consultation with the appropriate entities listed in Section 579.005, may adjust the criteria established under this subsection during the operation of the program provided the adjusted criteria are clearly articulated.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. [1185](#)), Sec. 1, eff.

June 14, 2013.

Sec. 579.007. FINANCING THE PROGRAM. (a) The creation of the pilot program under this chapter is contingent on the continuing agreement of the Commissioners Court of Harris County to contribute to the program each year in which the program operates services for persons with mental illness equivalent in value to funding provided by the state for the program.

(b) It is the intent of the legislature that appropriations made to fund the pilot program are made in addition to and will not reduce the amount of appropriations made in the regular funding of the Mental Health and Mental Retardation Authority of Harris County or the Harris County Psychiatric Center.

(c) The Commissioners Court of Harris County may seek and receive gifts and grants from federal sources, foundations, individuals, and other sources for the benefit of the pilot program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. [1185](#)), Sec. 1, eff. June 14, 2013.

Sec. 579.008. INSPECTIONS. The department may make inspections of the operation of and provision of mental health jail diversion services through the pilot program on behalf of the state to ensure state funds appropriated for the pilot program are used effectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. [1185](#)), Sec. 1, eff. June 14, 2013.

Sec. 579.009. REPORT. (a) Not later than December 1, 2016, the commissioner shall evaluate and submit a report concerning the effect of the pilot program in reducing recidivism and the frequency of arrests and incarceration among persons with mental illness in Harris County to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues.

(b) The report must include a description of the features of



the criminal justice mental health service model developed and tested under the pilot program and the commissioner's recommendation whether to expand use of the model statewide.

(c) In conducting the evaluation required under Subsection (a), the commissioner shall compare the rate of recidivism in Harris County among persons in the target population before the date the program is implemented in the community to the rate of recidivism among those persons two years after the date the program is implemented in the community and three years after the date the program is implemented in the community. The commissioner may include in the evaluation measures of the effectiveness of the program related to the well-being of persons served under the program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. 1185), Sec. 1, eff. June 14, 2013.

Sec. 579.010. CONCLUSION; EXPIRATION. The pilot program established under this chapter concludes and this chapter expires September 1, 2017.

Added by Acts 2013, 83rd Leg., R.S., Ch. 775 (S.B. 1185), Sec. 1, eff. June 14, 2013.

#### **SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT**

##### **CHAPTER 591. GENERAL PROVISIONS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with Mental Retardation Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with mental retardation have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with

mental retardation in this state.

(c) The state's responsibility to persons with mental retardation does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with mental retardation.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential facility for persons with mental retardation is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with mental retardation have been denied rights solely because of their retardation, the general public should be educated to the fact that persons with mental retardation who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with mental retardation in acquiring and maintaining rights and in participating in community life as fully as possible.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.003. DEFINITIONS. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Board" means the Texas Board of Mental Health and Mental Retardation.

(3) "Care" means the life support and maintenance services or other aid provided to a person with mental retardation, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving mental retardation services from the department or a community center.

(5) "Commissioner" means the commissioner of mental health and mental retardation.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides mental retardation services.

(7) "Department" means the Texas Department of Mental Health and Mental Retardation.

(7-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(8) "Interdisciplinary team" means a group of mental retardation professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with mental retardation and make recommendations for services for that person.

(9) "Director" means the director of a community center.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with mental retardation voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) "Mental retardation" means intellectual disability.

(14) "Mental retardation services" means programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority

removed for general purposes.

(15-a) "Person with intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

(16) "Person with mental retardation" means a person with intellectual disability.

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(19) "Service provider" means a person who provides mental retardation services.

(20) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(21) "Superintendent" means the individual in charge of a residential care facility.

(22) "Training" means the process by which a person with mental retardation is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 272 (H.B. [1481](#)), Sec. 5, eff. September 1, 2011.

Sec. 591.004. RULES. The board by rule shall ensure the implementation of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE. The least restrictive alternative is:

- (1) the available program or facility that is the least confining for a client's condition; and
- (2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.006. CONSENT. (a) Consent given by a person is legally adequate if the person:

- (1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;
- (2) understands the information; and
- (3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and understand:

- (1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;
- (2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and
- (3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER B. DUTIES OF DEPARTMENT**

Sec. 591.011. DEPARTMENT RESPONSIBILITIES. (a) The department shall make all reasonable efforts consistent with available resources to:

- (1) assure that each identified person with mental retardation who needs mental retardation services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by

law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with mental retardation the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533.034, a continuum of services to persons with mental retardation; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with mental retardation committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with mental retardation to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with mental retardation to which the department has assigned persons with mental retardation.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all residents and records of residents who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 13, eff. Aug. 30, 1993.

Sec. 591.012. COOPERATION WITH OTHER AGENCIES. Each agency authorized to provide education, support, related services, rehabilitation, and other services shall cooperate with the department under this subtitle to the extent cooperation is consistent with the agency's functions and authority.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.013. LONG-RANGE PLAN. (a) The department and the Texas Department of Human Services shall jointly develop a long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the plan, the department shall consider existing plans or studies made by the departments.

(d) The plan must address at least the following topics:

(1) the needs of persons with developmental disabilities, including mental retardation;

(2) how state services should be structured to meet those needs;

(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act and other federally funded programs;

(5) methods for expanding services available through the ICF-MR program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The departments shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and revise the plan biennially. Each department shall consider the most recent revision of the plan in any modifications of that department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-MR program" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. PENALTIES AND REMEDIES**

Sec. 591.021. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.022. CIVIL PENALTY. (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$1,000.



(c) A person who intentionally releases confidential information or records of a person with mental retardation in violation of law is liable to the person injured by the unlawful disclosure for \$1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

- (1) the injured person;
- (2) the injured person's parent, if the person is a minor;
- (3) a guardian, if the person has been adjudicated incompetent; or
- (4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

- (1) restrain and prevent a person from violating this subtitle or a rule adopted by the department under this subtitle; or
- (2) enforce compliance with this subtitle or a rule adopted by the department under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 for each violation, but not to exceed a total of \$20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in mental retardation services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE. (a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.025. LIABILITY. An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

## **CHAPTER 592. RIGHTS OF PERSONS WITH MENTAL RETARDATION**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 592.001. PURPOSE. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.002. RULES. The board by rule shall ensure the implementation of the rights guaranteed in this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

### **SUBCHAPTER B. BASIC BILL OF RIGHTS**

Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with mental retardation in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with mental retardation have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each person with mental retardation has the right to protection from exploitation and abuse because of the person's mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each person with mental retardation has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

- (1) alone;
- (2) in a group home;
- (3) with a family; or
- (4) in a supervised, protective environment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.014. EDUCATION. Each person with mental retardation has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of the person's:

- (1) chronological age;
- (2) degree of retardation;
- (3) accompanying disabilities or handicaps; or
- (4) admission or commitment to mental retardation services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.015. EMPLOYMENT. An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's mental retardation, unless:

- (1) the person's mental retardation significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or
- (2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.016. HOUSING. An owner, lessee, sublessee, assignee,

or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with mental retardation or a group that includes one or more persons with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.017. TREATMENT AND SERVICES. Each person with mental retardation has the right to receive for mental retardation adequate treatment and habilitative services that:

- (1) are suited to the person's individual needs;
- (2) maximize the person's capabilities;
- (3) enhance the person's ability to cope with the person's environment; and
- (4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.018. DETERMINATION OF MENTAL RETARDATION. A person thought to be a person with mental retardation has the right promptly to receive a determination of mental retardation using diagnostic techniques that are adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of mental retardation services as provided by Subchapter A, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.

Sec. 592.019. ADMINISTRATIVE HEARING. A person who files an application for a determination of mental retardation has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.

Sec. 592.020. INDEPENDENT DETERMINATION OF MENTAL RETARDATION. A person for whom a determination of mental retardation is performed or a person who files an application for a determination of mental retardation under Section 593.004 and who questions the validity or results of the determination of mental retardation has the right to an additional, independent determination of mental retardation performed at the person's own expense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.

Sec. 592.021. ADDITIONAL RIGHTS. Each person with mental retardation has the right to:

- (1) presumption of competency;
- (2) due process in guardianship proceedings; and
- (3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. RIGHTS OF CLIENTS**

Sec. 592.031. RIGHTS IN GENERAL. (a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.032. LEAST RESTRICTIVE ALTERNATIVE. Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.033. INDIVIDUALIZED PLAN. (a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to mental retardation services.

(d) The content of an individualized habilitation plan is as required by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 3, eff. Sept. 1, 1993.

Sec. 592.034. REVIEW AND REEVALUATION. (a) Each client has the right to have the individualized habilitation plan reviewed at least:

(1) once a year if the client is in a residential care facility; or

(2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:

(1) measure progress;

(2) modify objectives and programs if necessary; and

(3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic reassessment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 4, eff. Sept. 1, 1993.

Sec. 592.035. PARTICIPATION IN PLANNING. (a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:

(1) participate in planning the client's treatment and habilitation; and

(2) be informed in writing at reasonable intervals of the

client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.036. WITHDRAWAL FROM VOLUNTARY SERVICES. (a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from mental retardation services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.037. FREEDOM FROM MISTREATMENT. Each client has the right not to be mistreated, neglected, or abused by a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.038. FREEDOM FROM UNNECESSARY MEDICATION. (a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:

- (1) as punishment;
- (2) for the convenience of the staff;
- (3) as a substitute for a habilitation program; or
- (4) in quantities that interfere with the client's

habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter F.



Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 1, eff.  
September 1, 2013.

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with mental retardation or a group of persons with mental retardation, has the right to submit complaints or grievances regarding the infringement of the rights of a person with mental retardation or the delivery of mental retardation services against a person, group of persons, organization, or business to the appropriate public responsibility committee for investigation and appropriate action.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.040. INFORMATION ABOUT RIGHTS. (a) On admission for mental retardation services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. RIGHTS OF RESIDENTS**

Sec. 592.051. GENERAL RIGHTS OF RESIDENTS. Each resident has the right to:

- (1) a normal residential environment;
- (2) a humane physical environment;
- (3) communication and visits; and
- (4) possess personal property.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.052. MEDICAL AND DENTAL CARE AND TREATMENT. Each resident has the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.053. STANDARDS OF CARE. Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.054. DUTIES OF SUPERINTENDENT OR DIRECTOR. (a) Except as limited by this subtitle, the superintendent or director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

(b) Notwithstanding Subsection (a), consent is required for:

- (1) all surgical procedures; and
- (2) as provided by Section 592.153, the administration of psychoactive medications.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 2, eff. September 1, 2013.

Sec. 592.055. UNUSUAL OR HAZARDOUS TREATMENT. This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.056. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a resident is admitted to a residential care facility, the facility shall provide to the resident, and the parent if the resident is a minor or the guardian of the person of the resident, written notice, in the person's primary language, that a trust that qualifies under Section 593.081 is not liable for the resident's support. In addition, the facility shall ensure that, within 24 hours after the resident is admitted to the facility, the notification is explained to the resident, and the parent if the resident is a minor or the guardian of the person of the resident:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the resident's support.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 2, eff. June 19, 2009.

#### **SUBCHAPTER E. USE OF RESTRAINTS IN STATE SUPPORTED LIVING CENTERS**

Sec. 592.101. DEFINITION. In this subchapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical

restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.103. STANDING ORDERS FOR RESTRAINTS PROHIBITED. (a) A person may not issue a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) A person may not administer mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not use a straitjacket to restrain a resident of a state supported living center.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.105. DUTY TO REPORT. A state supported living center shall report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. The report must contain information and be in the form required by rules of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

#### **SUBCHAPTER F. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS**

Sec. 592.151. DEFINITIONS. In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a client to prevent:

(A) imminent probable death or substantial bodily harm to the client because the client:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the client is unable to satisfy the client's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

- (C) agents for control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.152. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) A person may not administer a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

- (1) the client is having a medication-related emergency;
- (2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;
- (3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or
- (4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if:

- (1) the consent is given voluntarily and without coercive or undue influence;
- (2) the treating physician or a person designated by the physician provides the following information, in a standard format approved by the department, to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client:
  - (A) the specific condition to be treated;
  - (B) the beneficial effects on that condition expected from the medication;
  - (C) the probable health care consequences of not consenting to the medication;
  - (D) the probable clinically significant side effects

and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) If a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency:

(1) the physician shall document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other

generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the client with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.153. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section, "ward" has the meaning assigned by Section 601, Texas Probate Code.

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

(1) the client is having a medication-related emergency;

(2) the client is under an order issued under Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) the client is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.154. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a client may file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

(1) the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care



facility under Subchapter C, Chapter 593, or other law or an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed for the client.

(b) An application filed under this section must state:

(1) that the physician believes that the client lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section must be filed separately from an application for commitment to a residential care facility.

(d) The hearing on the application may be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.155. RIGHTS OF CLIENT. A client for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled:

- (1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;
- (2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;
- (3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;
- (4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;
- (5) to be present at the hearing;
- (6) to request from the court an independent expert; and
- (7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.156. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a client who:

- (1) has been committed to a residential care facility; or
- (2) is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

- (1) that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the

client; or

(2) if the client was committed to a residential care facility by a criminal court with jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.157; or

(B) the client:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) In making the finding that treatment with the proposed medication is in the best interest of the client, the court shall consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the

notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the client is entitled to have provided to the client and the client's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order entered under this section shall authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the department.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(l) For a client described by Subsection (b)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the client in a correctional facility for competency restoration treatment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.157. FINDING THAT CLIENT PRESENTS A DANGER. In making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the client's present mental condition; and

(2) whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.158. APPEAL. (a) A client may appeal an order under this subchapter in the manner provided by Section 593.056 for an appeal of an order committing the client to a residential care facility.

(b) An order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.159. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.156.

(b) The issuance of an order under Section 592.156 is not a

determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.160. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 592.156 expires on the anniversary of the date the order was issued.

(b) An order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. An order continued under this subsection shall be reviewed by the issuing court every six months.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

## **CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 593.001. ADMISSION. A person may be admitted for mental retardation services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the department or a community center may not provide mental retardation services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential mental retardation services, including a determination of mental retardation, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The board by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 5, eff. Sept. 1, 1993.

Sec. 593.003. REQUIREMENT OF DETERMINATION OF MENTAL RETARDATION. (a) Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive mental retardation services unless the person first is determined to have mental retardation.

(b) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.004. APPLICATION FOR DETERMINATION OF MENTAL RETARDATION. (a) In this section, "authorized provider" means:

- (1) a physician licensed to practice in this state;
- (2) a psychologist licensed to practice in this state;
- (3) a professional licensed to practice in this state and certified by the department; or
- (4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of mental retardation using forms provided by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.

Sec. 593.005. DETERMINATION OF MENTAL RETARDATION. (a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider shall perform the determination of mental retardation. The department may charge a reasonable fee for certifying an authorized provider.

(b) The authorized provider shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

- (1) a measure of the person's intellectual functioning;
- (2) a determination of the person's adaptive behavior level; and
- (3) evidence of origination during the person's developmental period.

(c) The authorized provider may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a physician or psychologist if the authorized provider determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of mental retardation shall be performed at the department's expense by an authorized provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.

Sec. 593.006. REPORT. A person who files an application for a determination of mental retardation under Section 593.004 shall be promptly notified in writing of the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a determination of mental retardation of the person's right to:



(1) an independent determination of mental retardation under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of mental retardation to contest the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.008. ADMINISTRATIVE HEARING. (a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of mental retardation; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The board by rule shall implement the hearing procedures.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 7, eff. Sept. 1, 1993.

Sec. 593.009. HEARING REPORT; FINAL DECISION. (a) After each hearing, the hearing officer shall promptly report to the parties in

writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.010. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.011. FEES FOR SERVICES. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.012. ABSENT WITHOUT AUTHORITY. (a) The superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 2, eff. June 18,  
1999; Acts 1999, 76th Leg., ch. 1187, Sec. 20, eff. Sept. 1, 1999;  
Acts 2001, 77th Leg., ch. 1006, Sec. 2, eff. Sept. 1, 2001.

Sec. 593.013. REQUIREMENT OF INTERDISCIPLINARY TEAM  
RECOMMENDATION. (a) A person may not be admitted or committed to a  
residential care facility unless an interdisciplinary team recommends  
that placement.

(b) An interdisciplinary team shall:

- (1) interview the person with mental retardation, the  
person's parent if the person is a minor, and the person's guardian;
- (2) review the person's:
  - (A) social and medical history;
  - (B) medical assessment, which shall include an  
audiological, neurological, and vision screening;
  - (C) psychological and social assessment; and
  - (D) determination of adaptive behavior level;
- (3) determine the person's need for additional assessments,  
including educational and vocational assessments;
- (4) obtain any additional assessment necessary to plan  
services;
- (5) identify the person's habilitation and service  
preferences and needs; and
- (6) recommend services to address the person's needs that  
consider the person's preferences.

(c) The interdisciplinary team shall give the person, the  
person's parent if the person is a minor, and the person's guardian  
an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment,  
social history, or other relevant record from a school district,  
public or private agency, or appropriate professional if the  
interdisciplinary team determines that the assessment, social  
history, or record is valid.

(e) The interdisciplinary team shall prepare a written report  
of its findings and recommendations that is signed by each team  
member and shall promptly send a copy of the report and  
recommendations to the person, the person's parent if the person is a  
minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with mental retardation or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 8, eff. Sept. 1, 1993.

**SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY MENTAL  
RETARDATION SERVICES**

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. (a) The proposed client or the parent if the proposed client is a minor may apply for voluntary mental retardation services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993;  
Acts 1997, 75th Leg., ch. 809, Sec. 1, eff. Sept. 1, 1997.

Sec. 593.022. ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES. (a) An eligible person who applies for mental retardation services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT. (a) The board by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015-594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.025. PLACEMENT PREFERENCE. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission to a residential care facility is permitted without a determination of mental retardation and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility superintendent determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of mental retardation and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993.

Sec. 593.0275. EMERGENCY SERVICES. (a) A person may receive emergency services without a determination of mental retardation if:

(1) there is persuasive evidence that the person is a person with mental retardation;

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of mental retardation for the person served under this section shall be performed within 30 days after the date the services begin.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 10, eff. Sept. 1, 1993.

Sec. 593.028. RESPITE CARE. (a) A person may be admitted to a residential care facility for respite care without a determination of mental retardation and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;

(2) space is available at the facility for which respite care is requested;

(3) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility superintendent determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 11, eff. Sept. 1, 1993.

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the superintendent shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the

resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility superintendent determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;

(2) the superintendent files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY**

Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of mental retardation of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the superintendent of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with mental retardation to residential care facilities.

(d) A person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.



(e) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 12, eff. Sept. 1, 1993;  
Acts 1997, 75th Leg., ch. 1086, Sec. 39, eff. June 19, 1997.

Sec. 593.042. FORM OF APPLICATION. (a) An application for commitment of a person to a residential care facility must:

- (1) be executed under oath; and
- (2) include:

(A) the name, birth date, sex, and address of the proposed resident;

(B) the name and address of the proposed resident's parent or guardian, if applicable;

(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and

(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.

(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 13, eff. Sept. 1, 1993.

Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.

(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.

(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the

proceedings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with mental retardation; and  
(2) likely to cause injury to himself or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or  
(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or  
(2) another suitable location to which the resident may be transported under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.045. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.046. RELEASE FROM PROTECTIVE CUSTODY. (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.047. SETTING ON APPLICATION. On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of mental retardation and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of mental retardation under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 14, eff. Sept. 1, 1993.

Sec. 593.049. HEARING BEFORE JURY; PROCEDURE. (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.050. CONDUCT OF HEARING. (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of mental retardation and the current interdisciplinary team report and recommendations shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 15, eff. Sept. 1, 1993;  
Acts 2001, 77th Leg., ch. 1420, Sec. 10.007, eff. Sept. 1, 2001.

Sec. 593.051. DISMISSAL AFTER HEARING. If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.052. ORDER FOR COMMITMENT. (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with mental retardation;

(2) evidence is presented showing that because of retardation, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to himself or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.053. DECISION. The court in each case shall promptly report in writing the decision and findings of fact.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.054. NOT A JUDGMENT OF INCOMPETENCE. An order for commitment is not an adjudication of mental incompetency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.055. DESIGNATION OF FACILITY. If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

- (1) space in the facility is unavailable;
- (2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or
- (3) there are other compelling reasons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.056. APPEAL. (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER D. FEES**

Sec. 593.071. APPLICATION OF SUBCHAPTER. This subchapter applies only to a resident admitted to a residential care facility operated by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.072. INABILITY TO PAY. A resident may not be denied residential care because of an inability to pay for the care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The board by rule may determine the cost of support, maintenance, and treatment of a resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.074. MAXIMUM FEES. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The department may use the projected cost of providing residential services to establish the maximum fee that may be charged to a payer.

(c) The department may establish maximum fees on one or a combination of the following:

- (1) a statewide per capita;
- (2) an individual facility per capita; or
- (3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

- (1) who is not an individual; and
- (2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.075. SLIDING FEE SCHEDULE. (a) The board by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The board shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The department shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 278, Sec. 2, eff. June 5, 1995.

Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT.

(a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the department may:

(1) be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

(1) the resident's parent fails to pay child support as



required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.078. PAYMENT FOR ADULT RESIDENTS. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.079. PREVIOUS FEE AGREEMENTS. The unpaid portion of charges for support, maintenance, and treatment due from a parent before January 1, 1978, under agreements made before that date, remain as an obligation under previous law, but only to the extent of parental responsibility prescribed by the department fee schedule.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.080. STATE CLAIMS FOR UNPAID FEES. (a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.081. TRUST EXEMPTION. (a) If the resident is the beneficiary of a trust that has an aggregate principal of \$250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

- (1) a guardianship established under the Texas Probate Code;
- (2) a trust established under Chapter 142, Property Code;
- (3) a facility custodial account established under Section 551.003;
- (4) the provisions of a divorce decree or other court order

relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 498, Sec. 1, eff. June 18, 1999.

#### **SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW**

Sec. 593.091. ADMISSION AND COMMITMENT. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found;

or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the superintendent receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The superintendent may detain the resident for more than 96 hours in accordance with Section 593.030.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.093. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county an amount not to exceed \$50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

## **CHAPTER 594. TRANSFER AND DISCHARGE**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 594.001. APPLICABILITY OF CHAPTER. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(b) This chapter does not apply to the:

(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;

(2) voluntary withdrawal of a client from mental retardation services; or

(3) discharge of a client by a superintendent or director because the person is not a person with mental retardation according to the results of the determination of mental retardation.

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the determination of mental retardation is requested.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 16, eff. Sept. 1, 1993.

Sec. 594.002. LEAVE; FURLOUGH. The superintendent may grant or deny a resident a leave of absence or furlough.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.003. HABEAS CORPUS. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

**SUBCHAPTER B. TRANSFER OR DISCHARGE**

Sec. 594.011. SERVICE PROVIDER. A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

- (1) that the client's placement is no longer appropriate to the person's individual needs; or
- (2) that the client can be better treated and habilitated in another setting; and
- (3) placement in another setting that can better treat and habilitate the client has been secured.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN. (a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL. (a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING. (a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or

discharged from mental retardation services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.015. ADMINISTRATIVE HEARING. (a) An administrative hearing to contest a transfer or discharge decision must be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the superintendent have the right to:

(1) be present and represented at the hearing; and

(2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.016. DECISION. (a) After each case, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported, unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the superintendent shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.017. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.018. NOTICE TO COMMITTING COURT. When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.019. ALTERNATIVE SERVICES. (a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the mental retardation authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL**

Sec. 594.031. TRANSFER OF VOLUNTARY RESIDENT. A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.032. TRANSFER OF COURT-COMMITTED RESIDENT. (a) The superintendent may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital is in the best interest of the resident.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.033. EVALUATION; COURT ORDER. The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.034. REQUEST FOR TRANSFER ORDER. (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

- (1) a person with mental illness; and
- (2) requires observation or treatment in a mental hospital.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.035. HEARING DATE. When the committing court receives the hospital administrator's request and the certificates of medical



examination, the court shall set a date for the hearing on the proposed transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.036. NOTICE. (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated as provided by the Texas Probate Code and a guardian has been appointed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 1, eff. Sept. 1, 1995.

Sec. 594.037. HEARING LOCATION. (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.038. HEARING BEFORE JURY. (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.039. RESIDENT PRESENT AT HEARING. The resident is

entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.040. OPENING HEARING. The transfer hearing must be open to the public unless the court:

(1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.041. MEDICAL EVIDENCE. (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a mental hospital except on competent medical or psychiatric testimony.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.042. HEARING DETERMINATION. The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.043. DISCHARGE OF RESIDENT. A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility

shall be discharged.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.044. TRANSFER OF RESIDENTIAL CARE FACILITY. (a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the superintendent of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The superintendent shall immediately provide for the return of the resident to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.045. RETURN OF COURT-ORDERED TRANSFER RESIDENT. (a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of mental retardation; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

#### **CHAPTER 595. RECORDS**

Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the identity, diagnosis, evaluation, or treatment of a person that are

maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.002. RULES. The board shall adopt rules to carry out this chapter that the department considers necessary or proper to:

- (1) prevent circumvention or evasion of the chapter; or
- (2) facilitate compliance with the chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.003. CONSENT TO DISCLOSURE. (a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

- (1) the person about whom the record is maintained;
- (2) the person's parent if the person is a minor;
- (3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or
- (4) if the person is dead:
  - (A) the executor or administrator of the deceased's estate; or
  - (B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.004. RIGHT TO PERSONAL RECORD. (a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

- (1) the person is a client; and
- (2) the qualified professional responsible for supervising

the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.005. EXCEPTIONS. (a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

- (1) medical personnel to the extent necessary to meet a medical emergency;
- (2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or
- (3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with mental retardation.

(b) A person who receives confidential information under Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the superintendent of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 2, eff. May 27, 2003.

Sec. 595.006. USE OF RECORD IN CRIMINAL PROCEEDINGS. Except as authorized by a court order under Section 595.005, a confidential record may not be used to:

- (1) initiate or substantiate a criminal charge against a person receiving services; or
- (2) conduct an investigation of a person receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.007. CONFIDENTIALITY OF PAST SERVICES. The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

- (1) delivery of services to clients; or
- (2) payment for mental retardation services as defined in this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.009. RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT. (a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION. This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with mental retardation to the person's parent, guardian, relative, or friend.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

## **CHAPTER 597. CAPACITY OF CLIENTS TO CONSENT TO TREATMENT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 597.001. DEFINITIONS. In this chapter:

(1) "Highly restrictive procedure" means the application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.

(2) "Client" means a person receiving services in a community-based ICF-MR facility.

(3) "Committee" means a surrogate consent committee established under Section 597.042.

(4) "ICF-MR" has the meaning assigned by Section 531.002.

(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for the mentally retarded.

(6) "Major medical and dental treatment" means a medical, surgical, dental, or diagnostic procedure or intervention that:

- (A) has a significant recovery period;
- (B) presents a significant risk;
- (C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.

(7) "Psychoactive medication" means any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an ICF-MR facility.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.002. RULES. The board may adopt rules necessary to implement this chapter not later than 180 days after its effective date.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.003. EXCEPTIONS. (a) This chapter does not apply to decisions for the following:

- (1) experimental research;
- (2) abortion;
- (3) sterilization;
- (4) management of client funds; and
- (5) electroconvulsive treatment.

(b) This chapter does not apply to campus-based facilities operated by the department.



Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18,  
1999.

**SUBCHAPTER B. ASSESSMENT OF CLIENT'S CAPACITY; INCAPACITATED CLIENTS  
WITHOUT GUARDIANS**

Sec. 597.021. ICF-MR ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT. (a) The board by rule shall require an ICF-MR facility certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.

(b) The rules must require the use of a uniform assessment process prescribed by board rule to determine a client's capacity to make treatment decisions.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18,  
1999.

**SUBCHAPTER C. SURROGATE CONSENT FOR ICF-MR CLIENTS**

Sec. 597.041. SURROGATE DECISION-MAKERS. (a) If the results of an assessment conducted in accordance with Section 597.021 indicate that an adult client who does not have a legal guardian or a client under 18 years of age who has no parent, legal guardian, or managing or possessory conservator lacks the capacity to make a major medical or dental treatment decision, an adult surrogate from the following list, in order of descending preference, who has decision-making capacity and who is willing to consent on behalf of the client may consent to major medical or dental treatment on behalf of the client:

- (1) an actively involved spouse;
- (2) an actively involved adult child who has the waiver and consent of all other actively involved adult children of the client to act as the sole decision-maker;
- (3) an actively involved parent or stepparent;
- (4) an actively involved adult sibling who has the waiver and consent of all other actively involved adult siblings of the

client to act as the sole decision-maker; and

(5) any other actively involved adult relative who has the waiver and consent of all other actively involved adult relatives of the client to act as the sole decision-maker.

(b) Any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

(c) Consent given by the surrogate decision-maker is valid and competent to the same extent as if the client had the capacity to consent and had consented.

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under Chapter V, Texas Probate Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.042. SURROGATE CONSENT COMMITTEE ESTABLISHED; DEPARTMENTAL SUPPORT. (a) For cases in which there is no guardian or surrogate decision-maker available, the department shall establish and maintain a list of individuals qualified to serve on a surrogate consent committee.

(b) The department shall provide the staff and assistance necessary to perform the duties prescribed by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.043. COMMITTEE MEMBERSHIP. (a) A surrogate consent committee considering an application for a treatment decision shall be composed of at least three but not more than five members, and consent on behalf of clients shall be based on consensus of the members.

(b) A committee considering an application for a treatment decision must consist of individuals who:

- (1) are not employees of the facility;
- (2) do not provide contractual services to the facility;

(3) do not manage or exercise supervisory control over:  
    (A) the facility or the employees of the facility; or  
    (B) any company, corporation, or other legal entity  
that manages or exercises control over the facility or the employees  
of the facility;

(4) do not have a financial interest in the facility or in  
any company, corporation, or other legal entity that has a financial  
interest in the facility; and

(5) are not related to the client.

(c) The list of qualified individuals from which committee  
members are drawn shall include:

(1) health care professionals licensed or registered in  
this state who have specialized training in medicine,  
psychopharmacology, nursing, or psychology;

(2) persons with mental retardation or parents, siblings,  
spouses, or children of a person with mental retardation;

(3) attorneys licensed in this state who have knowledge of  
legal issues of concern to persons with mental retardation or to the  
families of persons with mental retardation;

(4) members of private organizations that advocate on  
behalf of persons with mental retardation; and

(5) persons with demonstrated expertise or interest in the  
care and treatment of persons with mental disabilities.

(d) At least one member of the committee must be an individual  
listed in Subsection (c)(1) or (5).

(e) A member of a committee shall participate in education and  
training as required by department rule.

(f) The department shall designate a committee chair.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18,  
1999.

Sec. 597.044. APPLICATION FOR TREATMENT DECISION. (a) If the  
results of the assessment conducted in accordance with Section  
597.021 indicate that a client who does not have a legal guardian or  
surrogate decision-maker lacks the capacity to make a treatment  
decision about major medical or dental treatment, psychoactive

medication, or a highly restrictive procedure, the ICF-MR facility must file an application for a treatment decision with the department.

(b) An application must be in the form prescribed by the department, must be signed by the applicant, and must:

(1) state that the applicant has reason to believe and does believe that the client has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;

(2) specify the condition proposed to be treated;

(3) provide a description of the proposed treatment, including the risks and benefits to the client of the proposed treatment;

(4) provide a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons the alternatives were rejected;

(5) state the applicant's opinion on whether the proposed treatment promotes the client's best interest and the grounds for the opinion;

(6) state the client's opinion about the proposed treatment, if known;

(7) provide any other information necessary to determine the client's best interest regarding the treatment; and

(8) state that the client does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the client who is able and willing to become the client's guardian or surrogate decision-maker.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997.  
Reenacted and amended by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.045. NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION. (a) Following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b), the department shall appoint a surrogate consent committee.

(b) The ICF-MR facility with assistance from the department shall schedule a review of the application.

(c) The ICF-MR facility with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by board rule. The ICF-MR facility shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Act 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.046. PREREVIEW OF APPLICATION. (a) Before the date of the review of an application for a treatment decision the committee chair shall review the application to determine whether additional information may be necessary to assist the committee in determining the client's best interest under the circumstances.

(b) A committee member may consult with a person who might assist in the determination of the best interest of the client or in learning the personal opinions, beliefs, and values of the client.

(c) If a committee that does not include in its membership an individual listed in Section 597.043(c)(1) is to review an application for a treatment decision about psychoactive medication, the department shall provide consultation with a health care professional licensed or registered in this state to assist the committee in the determination of the best interest of the client.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding any

other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with mental retardation, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.048. REVIEW OF APPLICATION. (a) The committee shall review the application at the time, place, and date provided in the notice under Section 597.045.

(b) A person notified under Section 597.045 is entitled to be present and to present evidence personally or through a representative.

(c) The committee may take testimony or review evidence from any person who might assist the committee in determining a client's best interest.

(d) Formal rules of evidence do not apply to committee proceedings.

(e) If practicable, the committee shall interview and observe the client before making a determination of the client's best interest, and in those cases when a client is not interviewed, the reason must be documented in the committee's record.

(f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the Texas Probate Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 5, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.049. DETERMINATION OF BEST INTEREST. (a) The committee shall make a determination, based on clear and convincing

evidence, of whether the proposed treatment promotes the client's best interest and a determination that:

(1) a person has not been appointed as the guardian of the client's person before the sixth day after proceedings are suspended under Section 597.048(f); or

(2) there is a medical necessity, based on clear and convincing evidence, that the determination about the proposed treatment occur before guardianship proceedings are completed.

(b) In making its determination of the best interest of the client, the committee shall consider fully the preference of the client as articulated at any time.

(c) According to its determination of the client's best interest, the committee shall consent or refuse the treatment on the client's behalf.

(d) The committee shall determine a date on which the consent becomes effective and a date on which the consent expires.

(e) A person serving on a committee who consents or refuses to consent on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 6, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.050. NOTICE OF DETERMINATION. (a) The committee shall issue a written opinion containing each of its determinations and a separate statement of the committee's findings of fact.

(b) The ICF-MR facility shall send a copy of the committee's opinion to:

- (1) each person notified under Section 597.045; and
- (2) the department.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 7, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.051. EFFECT OF COMMITTEE'S DETERMINATION. This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. June 18, 1999.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.052. SCOPE OF CONSENT. (a) The committee or the surrogate decision-maker may consent to the release of records related to the client's condition or treatment to facilitate treatment to which the committee or surrogate decision-maker has consented.

(b) The interdisciplinary team may consent to psychoactive medication subsequent to the initial consent for administration of psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.

(c) Unless another decision-making mechanism is provided for by law, a client, a client's authorized surrogate decision-maker if available, or the client's interdisciplinary team may consent to decisions which involve risk to client protection and rights not specifically reserved to surrogate decision-makers or surrogate consent committees.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 8, eff. Sept. 1, 1997.  
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.053. APPEALS. (a) A person notified under Section 597.045 may appeal the committee's decision by filing a petition in the probate court or court having probate jurisdiction for the county in which the client resides or in Travis County. The person must file the appeal not later than the 15th day after the effective date of the committee's determination.

(b) If the hearing is to be held in a probate court in which the judge is not a licensed attorney, the person filing the appeal may request that the proceeding be transferred to a court with a



judge who is licensed to practice law in this state. The probate court judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(c) A copy of the petition must be served on all parties of record in the proceedings before the committee.

(d) After considering the nature of the condition of the client, the proposed treatment, and the need for timely medical attention, the court may issue a temporary restraining order to facilitate the appeal. If the order is granted, the court shall expedite the trial.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.054. PROCEDURES. (a) Each ICF-MR shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

(b) A committee is not subject to Chapter 2001, Government Code, Chapter 551, Government Code, or Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), (88), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 450, Sec. 9, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

**SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND MENTAL RETARDATION**

**CHAPTER 611. MENTAL HEALTH RECORDS**

Sec. 611.001. DEFINITIONS. In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.002. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

(c) This section applies regardless of when the patient received services from a professional.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.11, eff. Aug. 30, 1993.

Sec. 611.003. PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY. (a) The privilege of confidentiality may be claimed by:

(1) the patient;

(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.004. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(b) Personnel who receive confidential information under

Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 856, Sec. 8, eff. Sept. 1, 1995;  
Acts 1999, 76th Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 138 (H.B. [741](#)), Sec. 1, eff. September 1, 2005.

Sec. 611.0045. RIGHT TO MENTAL HEALTH RECORD. (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the

patient of the denial and document the denial as prescribed by Subsection (c).

(e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the patient's commitment.

(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.

(i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.12, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.806, eff. Sept. 1, 2001.

Sec. 611.005. LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c) The aggrieved person also has a civil cause of action for damages.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.13, eff. Aug. 30, 1993.

Sec. 611.006. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information in:

(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may

be disclosed only with respect to issues involving the patient's mental or emotional health;

(6) a judicial proceeding affecting the parent-child relationship;

(7) any criminal proceeding, as otherwise provided by law;

(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;

(9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;

(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:

(A) Chapter 462;

(B) Chapter 574; or

(C) Chapter 593; or

(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.007. REVOCATION OF CONSENT. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.008. REQUEST BY PATIENT. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

(1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

#### **CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH**

Sec. 612.001. EXECUTION OF INTERSTATE COMPACT. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

##### **"INTERSTATE COMPACT ON MENTAL HEALTH**

"The contracting states solemnly agree that:

##### **"ARTICLE I**

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the



mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c) 'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

"(d) 'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e) 'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f) 'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g) 'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h) 'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon

clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

"(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### "ARTICLE IV

"(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity

of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### "ARTICLE V

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### "ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### "ARTICLE VII

"(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### "ARTICLE VIII

"(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with

power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any

state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.002. COMPACT ADMINISTRATOR. (a) Under the compact, the governor shall appoint the commissioner of mental health and mental retardation as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.004. GENERAL POWERS AND DUTIES OF ADMINISTRATOR. (a) The compact administrator, acting jointly with like officers of other

states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.005. SUPPLEMENTARY AGREEMENTS. (a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or

(2) that will perform the service.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.006. FINANCIAL AGREEMENTS. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.007. REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS. (a) The compact administrator shall consult with the

immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

**CHAPTER 613. KIDNEY DONATION BY WARD WITH MENTAL RETARDATION**

Sec. 613.001. DEFINITION. In this chapter, "ward with mental retardation" means a ward who is a person with mental retardation, as defined by Subtitle D.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 613.002. COURT ORDER AUTHORIZING KIDNEY DONATION. A district court may authorize the donation of a kidney of a ward with mental retardation to a father, mother, son, daughter, brother, or sister of the ward if:

- (1) the guardian of the ward with mental retardation consents to the donation;
  - (2) the ward is 12 years of age or older;
  - (3) the ward assents to the kidney transplant;
  - (4) the ward has two kidneys;
  - (5) without the transplant the donee will soon die or suffer severe and progressive deterioration, and with the transplant the donee will probably benefit substantially;
  - (6) there are no medically preferable alternatives to a kidney transplant for the donee;
  - (7) the risks of the operation and the long-term risks to the ward are minimal;
  - (8) the ward will not likely suffer psychological harm;
- and
- (9) the transplant will promote the ward's best interests.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.



Sec. 613.003. PETITION FOR COURT ORDER. The guardian of the person of a ward with mental retardation may petition a district court having jurisdiction of the guardian for an order authorizing the ward to donate a kidney under Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 613.004. COURT HEARING. (a) The court shall hold a hearing on the petition filed under Section 613.003.

(b) A party to the proceeding is entitled on request to a preferential setting for the hearing.

(c) The court shall appoint an attorney ad litem and a guardian ad litem to represent the interest of the ward with mental retardation. Neither person appointed may be related to the ward within the second degree by consanguinity.

(d) The hearing must be adversary in order to secure a complete record, and the attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) The petitioner has the burden of establishing good cause for the kidney donation by establishing the prerequisites prescribed by Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 613.005. INTERVIEW AND EVALUATION ORDER BY COURT. (a) Before the eighth day after the date of the hearing, the court shall interview the ward with mental retardation to determine if the ward assents to the donation. The interview shall be conducted in chambers and out of the presence of the guardian.

(b) If the court considers it necessary, the court may order the performance of a determination of mental retardation, as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 17, eff. Sept. 1, 1993.

#### **CHAPTER 614. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR**

**MENTAL IMPAIRMENTS**

Sec. 614.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or mental retardation provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3) "Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(3-a) "Continuity of care and services" refers to the process of:

(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of an offender with medical or mental impairments;

(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and

(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.

(4) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or a combination of physical and mental impairments;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) receptive and expressive language;

- (v) mobility;
- (vi) capacity for independent living; or
- (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(5) "Mental illness" has the meaning assigned by Section 571.003.

(6) "Mental impairment" means a mental illness, mental retardation, or a developmental disability.

(7) "Mental retardation" has the meaning assigned by Section 591.003.

(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) has a mental impairment; or

(B) is elderly, physically disabled, terminally ill, or significantly ill.

(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10) "Person with mental retardation" means a juvenile or adult with mental retardation that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private or state school for persons with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.52, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 1, eff. September 1, 2007.

Sec. 614.002. COMPOSITION OF COMMITTEE; DUTIES. (a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 29 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, mental retardation, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(c)(1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;

(B) the Texas Criminal Defense Lawyers Association;

(C) the Texas Association of Counties;

(D) the Texas Medical Association;

(E) the Texas Society of Psychiatric Physicians;

(F) the Texas Psychological Association;

(G) the Sheriffs' Association of Texas;

(H) the court of criminal appeals;

(I) the County Judges and Commissioners Association of Texas; and

(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

(d) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated

representative, shall serve as a member of the committee:

- (1) the correctional institutions division of the Texas Department of Criminal Justice;
- (2) the Department of State Health Services;
- (3) the parole division of the Texas Department of Criminal Justice;
- (4) the community justice assistance division of the Texas Department of Criminal Justice;
- (5) the Texas Juvenile Justice Department;
- (6) the Department of Assistive and Rehabilitative Services;
- (7) the Correctional Managed Health Care Committee;
- (8) the Mental Health Association in Texas;
- (9) the Board of Pardons and Paroles;
- (10) the Texas Commission on Law Enforcement;
- (11) the Texas Council of Community Mental Health and Mental Retardation Centers;
- (12) the Commission on Jail Standards;
- (13) the Texas Council for Developmental Disabilities;
- (14) the Texas Association for Retarded Citizens;
- (15) the National Alliance for the Mentally Ill of Texas;
- (16) the Parent Association for the Retarded of Texas, Inc.;
- (17) the Health and Human Services Commission; and
- (18) the Department of Aging and Disability Services.

(f) In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-large member:

- (1) does not have at the time of taking office the qualifications required by Subsection (b);
- (2) does not maintain during service on the committee the qualifications required by Subsection (b);
- (3) is ineligible for membership under Subsection (d);
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;
- (5) is absent from more than half of the regularly

scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or

(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 2.020, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.50, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 79, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1188, Sec. 3.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 27.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 9.005, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1112 (H.B. [2384](#)), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 25.112, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 8, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.39, eff. May 18, 2013.

Sec. 614.003. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS; DIRECTOR. The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 4, eff. Sept. 1, 2003.

Sec. 614.0031. TRAINING PROGRAM. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the committee and the office;
- (2) the programs operated by the committee and the office;
- (3) the role and functions of the committee and the office;
- (4) the rules of the committee and the office;
- (5) the current budget for the committee and the office;
- (6) the results of the most recent formal audit of the committee and the office;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government

Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 5, eff. Sept. 1, 2003.

Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR FITNESS TO PROCEED. (a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and

(2) periodically identify state jail felony defendants suitable for release under Section 15(i), Article 42.12, Code of Criminal Procedure, and perform other duties imposed on the office by that section.

(b) The office shall:

(1) with the special assistance of committee members appointed under Section 614.002(b)(1):

(A) review examinations to determine the competency of defendants in criminal cases to stand trial and examinations to determine the fitness of children to proceed with respect to adjudications of delinquent conduct or conduct indicating a need for supervision; and

(B) periodically report to the legislature and the court of criminal appeals findings made as a result of the review described by Paragraph (A); and

(2) approve and make generally available in electronic format a standard form for use by experts in reporting competency



examination results under Chapter 46B, Code of Criminal Procedure.

(c) A district or juvenile court shall submit to the office on a monthly basis all reports based on examinations described by Subsection (b).

Added by Acts 2003, 78th Leg., ch. 856, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 35, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1269 (H.B. 2194), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 617 (H.B. 431), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.003, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 44, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.019, eff. September 1, 2009.

Sec. 614.004. TERMS. The at-large members of the committee serve for staggered six-year terms with the terms of approximately one-third of the at-large members expiring on February 1 of each odd-numbered year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 856, Sec. 7, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1170, Sec. 27.02, eff. Sept. 1, 2003.

Sec. 614.005. OFFICERS; MEETINGS. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.

(b) The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1188, Sec. 3.03, eff. Sept. 1, 1999;

Acts 2003, 78th Leg., ch. 856, Sec. 8, eff. Sept. 1, 2003.

Sec. 614.006. APPLICABILITY OF CERTAIN GOVERNMENT CODE PROVISIONS. (a) The provisions of Chapter 2110, Government Code, other than Section 2110.002(a), apply to the committee.

(b) A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 856, Sec. 9, eff. Sept. 1, 2003.

Sec. 614.007. POWERS AND DUTIES. The office shall:

(1) determine the status of offenders with medical or mental impairments in the state criminal justice system;

(2) identify needed services for offenders with medical or mental impairments;

(3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with medical or mental impairments;

(5) evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;

(7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;

(8) apply for and receive money made available by the federal or state government or by any other public or private source

to be used by the office to perform its duties;

(9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;

(10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and

(11) assess the need for demonstration projects and provide management for approved projects.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 312, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1188, Sec. 3.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 10, eff. Sept. 1, 2003.

Sec. 614.008. COMMUNITY-BASED DIVERSION PROGRAM FOR OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS. (a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly, physically disabled, terminally ill, or significantly ill and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c) The agencies represented on the committee shall perform duties and offer services as required by the office to further the purposes of the program and the office.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 11, eff. Sept. 1, 2003.

Sec. 614.009. BIENNIAL REPORT. Not later than February 1 of each odd-numbered year, the office shall present to the board and

file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

- (1) an evaluation of any demonstration project undertaken by the office;
- (2) an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with special needs;
- (3) recommendations of the office made in accordance with Section 614.007(5);
- (4) an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, 614.016, and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and
- (5) any other recommendations that the office considers appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 488, Sec. 2, eff. Sept. 1, 1993;  
Acts 2003, 78th Leg., ch. 856, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. [3689](#)), Sec. 4.009, eff. June 19, 2009.

Sec. 614.0101. PUBLIC ACCESS. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 13, eff. Sept. 1, 2003.

Sec. 614.0102. COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the office;

- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 14, eff. Sept. 1, 2003.

Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or mental retardation authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

- (b) The memorandum of understanding must establish methods for:
- (1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;
  - (2) developing interagency rules, policies, procedures, and

standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Texas Department of Mental Health and Mental Retardation, local mental health or mental retardation authorities, the Commission on Jail Standards, and local jails;

(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and

(4) establishing a process to report implementation activities to the office.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or mental retardation authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or mental retardation authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or mental retardation authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 312, Sec. 7, eff. Sept. 1, 1997;

Acts 2001, 77th Leg., ch. 165, Sec. 1, eff. Sept. 1, 2001; Acts

2003, 78th Leg., ch. 856, Sec. 15, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. [839](#)), Sec. 2, eff. September 1, 2007.

Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS. (a) The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

- (1) identifying elderly offenders in the criminal justice system;
- (2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Texas Department of Human Services, and the Texas Department on Aging; and
- (3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging shall:

- (1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and
- (2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 16, eff. Sept. 1, 2003.

Sec. 614.015. CONTINUITY OF CARE FOR PHYSICALLY DISABLED, TERMINALLY ILL, OR SIGNIFICANTLY ILL OFFENDERS. (a) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services by rule shall adopt a memorandum of understanding that establishes their respective

responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are physically disabled, terminally ill, or significantly ill by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and

(3) identifying the services needed by offenders who are physically disabled, terminally ill, or significantly ill to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill; and

(2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 835, Sec. 26, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 3, eff. September 1, 2007.

Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by



rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill;

(2) developing procedures for the exchange of information relating to offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.40, eff. May 18, 2013.

Sec. 614.017. EXCHANGE OF INFORMATION. (a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of

continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Justice Department;

(E) the Department of Assistive and Rehabilitative Services;

(F) the Texas Education Agency;

(G) the Commission on Jail Standards;

(H) the Department of Aging and Disability Services;

(I) the Texas School for the Blind and Visually Impaired;

(J) community supervision and corrections departments and local juvenile probation departments;

(K) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(L) local jails regulated by the Commission on Jail Standards;

(M) a municipal or county health department;

(N) a hospital district;

(O) a judge of this state with jurisdiction over juvenile or criminal cases;

(P) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(Q) the Health and Human Services Commission;

(R) the Department of Information Resources;

(S) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(T) the Department of Family and Protective Services.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 321, Sec. 1.107, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1067, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1188, Sec. 3.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 247, Sec. 1, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 6, Sec. 1, 2, 6, eff. April 10, 2003; Acts 2003, 78th Leg., ch. 856, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 706 (S.B. [396](#)), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. [839](#)), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. [3689](#)), Sec. 4.007, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. [3689](#)), Sec. 4.008, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. [653](#)), Sec. 2.003, eff. September 1, 2011.

Sec. 614.018. CONTINUITY OF CARE FOR JUVENILES WITH MENTAL IMPAIRMENTS. (a) The Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services,

the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or mental retardation authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

Added by Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. [3689](#)), Sec. 4.006, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. [653](#)), Sec. 2.004, eff.

September 1, 2011.

Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in cooperation with the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Youth Commission and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or mental retardation who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the commission and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or mental retardation services provided by a local mental health or mental retardation authority.

Added by Acts 2001, 77th Leg., ch. 328, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1038 (H.B. 4451), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.015, eff. September 1, 2011.

Sec. 614.020. YOUTH ASSERTIVE COMMUNITY TREATMENT PROGRAM. (a)

The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

- (1) are under 18 years of age;
- (2) have severe and persistent mental illness;
- (3) have a history of:
  - (A) multiple hospitalizations;
  - (B) poor performance in school;
  - (C) placement in emergency shelters or residential treatment facilities; or
  - (D) chemical dependency or abuse; and
- (4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community treatment programs established by the Texas Department of Mental Health and Mental Retardation. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

- (1) a registered nurse to provide full-time direct services to the program participants; and
- (2) a psychiatrist available to the program for 10 or more hours each week.

(d) In administering the program, the program's professional team shall:

- (1) provide psychiatric, substance abuse, and employment services to program participants;
- (2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;
- (3) be available to program participants during evening and weekend hours;
- (4) meet the needs of special populations;
- (5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and
- (6) cover the geographic areas served by the program.

(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.

Added by Acts 2001, 77th Leg., ch. 1499, Sec. 1, eff. Sept. 1, 2001.  
Renumbered from Health & Safety Sec. 614.019 and amended by Acts  
2003, 78th Leg., ch. 856, Sec. 20, eff. Sept. 1, 2003.

Sec. 614.0205. APPROPRIATION CONTINGENCY. The office is required to provide a service or program under Section 614.019(a) or 614.020 only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, provide a service or program under Section 614.019(a) or 614.020 using other appropriations available for that purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 785 (H.B. [2119](#)), Sec. 1, eff. June 17, 2011.

Sec. 614.021. SERVICES FOR WRONGFULLY IMPRISONED PERSONS. (a) In this section, "wrongfully imprisoned person" has the meaning assigned by Section 501.102, Government Code.

(b) The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

(1) accessing medical and dental services, including assistance in completing documents required for application to federal entitlement programs;

(2) obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and

(3) obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c) The office shall submit an annual report to the legislature on the provision of services under this section to wrongfully imprisoned persons.

Added by Acts 2009, 81st Leg., R.S., Ch. 180 (H.B. [1736](#)), Sec. 11, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 27.002(10),

eff. September 1, 2011.

#### **CHAPTER 615. MISCELLANEOUS PROVISIONS**

Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners court shall provide for the support of a person with mental illness or mental retardation who is:

- (1) a resident of the county;
- (2) unable to provide self-support; and
- (3) cannot be admitted to a state mental health or mental retardation facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 615.002. ACCESS TO MENTAL HEALTH RECORDS BY PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801 et seq.) is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.

(b) If the patient consents to notification, the protection and advocacy system shall notify the Texas Department of Mental Health and Mental Retardation's Office of Client Services and Rights Protection if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a patient in a facility or program operated by, licensed by, certified by, or in a contractual relationship with the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

### **TITLE 8. DEATH AND DISPOSITION OF THE BODY**

#### **SUBTITLE A. DEATH**

#### **CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS**

##### **SUBCHAPTER A. DETERMINATION OF DEATH**

Sec. 671.001. STANDARD USED IN DETERMINING DEATH. (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.



(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

(d) A registered nurse or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The board shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 8, eff. June 16, 1995.

Sec. 671.002. LIMITATION OF LIABILITY. (a) A physician who determines death in accordance with Section 671.001(b) or a registered nurse or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's, registered nurse's, or physician assistant's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 201, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 9, eff. June 16, 1995.

#### **SUBCHAPTER B. AUTOPSY REPORTS**

Sec. 671.011. DEFINITION. (a) In this subchapter, "autopsy report" includes:

(1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

(2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Added by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.012. FILING AUTOPSY REPORT. A designated physician who performs an autopsy provided for by state law shall file an autopsy report with the office designated by the autopsy order not later than the 30th day after the date of request for the autopsy unless:

(1) a required test cannot be completed within that time; and

(2) the physician certifies when the autopsy report is filed that a required test could not be completed within the 30-day limit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 671.011 by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.013. RELEASE OF REPORTS; FEES. (a) An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

(b) A person who receives information under Subsection (a) may

disclose the information to others only to the extent consistent with the authorized purposes for which the information was obtained.

(c) The commissioners court of the county having custody of an autopsy report shall establish a fee to be charged for a copy of the autopsy report as follows:

(1) for written portions of the report, an amount reasonably necessary to recover the cost of providing the copy, not to exceed \$25; and

(2) for x-rays and photographs, the actual cost of reproduction, including the reasonable cost of overhead.

(d) Except as provided by Subsection (e), an autopsy report released in connection with the determination of the cause of death in relation to a workers' compensation claim under Subsection (a) shall be released not later than the 15th business day after the date the request is received from the authorized person.

(e) If the report has not been filed as provided by Section 671.012, a representative of the office designated by the autopsy order shall, not later than the 10th business day after the date of the request, notify the requesting person that the report has not been filed and of the date, to the best of the knowledge of the representative, that the requesting person may anticipate receiving the report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 671.012 and amended by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 2, eff. June 18, 2005.

#### **CHAPTER 671A. NOTICE REQUIRED AT PRIVATE AUTOPSY FACILITY**

Sec. 671A.001. DEFINITION. In this chapter, "private autopsy facility" means a facility that is owned or operated by a physician who performs autopsy services for a fee or that employs a physician to perform autopsy services for a fee, including autopsy services performed on the order of a justice of the peace. The term does not include a medical examiner's office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.002. NOTICE FOR COMPLAINTS REQUIRED. (a) A private autopsy facility shall post a notice in a conspicuous place in a public area of the facility that substantially complies with the notice published by the Texas Medical Board under this section.

(b) The notice must state in English and in Spanish that a person may file with the Texas Medical Board a complaint against a physician who performs autopsy services and must include the appropriate mailing address and telephone number of the Texas Medical Board for filing complaints against physicians.

(c) The Texas Medical Board by rule shall adopt a sample form of the notice. The board shall publish the notice on the board's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.003. CRIMINAL PENALTY FOR FAILURE TO POST NOTICE.

(a) A private autopsy facility commits an offense if the facility fails to post the notice required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

## **CHAPTER 672. ADULT FATALITY REVIEW AND INVESTIGATION**

Sec. 672.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting emotional or physical harm leading to death; or

(B) sexual abuse of an adult, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code, or Chapter 22, Penal Code.

(2) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

(3) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(4) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(5) "Review" means a reexamination of information regarding a deceased adult from relevant agencies, professionals, and health care providers.

(6) "Review team" means an unexpected fatality review team established under this chapter.

(7) "Unexpected death" includes a death of an adult that before investigation appears:

(A) to have occurred without anticipation or forewarning; and

(B) to have been caused by suicide, family violence, or abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.002. ESTABLISHMENT OF REVIEW TEAM. (a) A multidisciplinary and multiagency unexpected fatality review team may be established for a county to conduct reviews of unexpected deaths that occur within the county. A review team for a county with a population of less than 50,000 may join with an adjacent county or counties to establish a combined review team.

(b) The commissioners court of a county may oversee the activities of the review team or may designate a county department to oversee those activities. The commissioners court may designate a nonprofit agency or a political subdivision of the state involved in the support or treatment of victims of family violence, abuse, or suicide to oversee the activities of the review team if the governing body of the nonprofit agency or political subdivision concurs.

(c) Any person who may be a member of a review team under Subsection (d) may initiate the establishment of a review team and call the first organizational meeting of the team.

(d) A review team may include:

(1) a criminal prosecutor involved in prosecuting crimes involving family violence;

(2) a peace officer;

(3) a justice of the peace or medical examiner;

- (4) a public health professional;
  - (5) a representative of the Department of Protective and Regulatory Services engaged in providing adult protective services;
  - (6) a mental health services provider;
  - (7) a representative of the family violence shelter center providing services to the county;
  - (8) the victim witness advocate in the county prosecutor's office;
  - (9) a representative from the battering intervention and prevention program for the county; and
  - (10) a community supervision and corrections department officer.
- (e) Members of a review team may select additional team members according to community resources and needs.
- (f) A review team shall select a presiding officer from its members.
- (g) Members selected under Subsection (e) must reflect the geographical, cultural, racial, ethnic, and gender diversity of the county or counties represented.
- (h) Members selected under this section should have experience in abuse, neglect, suicide, family violence, or elder abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.003. PURPOSE AND POWERS OF REVIEW TEAM. (a) The purpose of a review team is to decrease the incidence of preventable adult deaths by:

- (1) promoting cooperation, communication, and coordination among agencies involved in responding to unexpected deaths;
  - (2) developing an understanding of the causes and incidence of unexpected deaths in the county or counties in which the review team is located; and
  - (3) advising the legislature, appropriate state agencies, and local law enforcement agencies on changes to law, policy, or practice that will reduce the number of unexpected deaths.
- (b) To achieve its purpose, a review team shall:
- (1) develop and implement, according to local needs and resources, appropriate protocols;
  - (2) meet on a regular basis to review fatality cases

suspected to have resulted from suicide, family violence, or abuse and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

- (3) collect and maintain data, as appropriate; and
- (4) submit the report required under Section 672.008.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.004. DUTIES OF PRESIDING OFFICER. The presiding officer of a review team may:

- (1) send notices to the review team members of a meeting to review a fatality involving suspected suicide, family violence, or abuse;
- (2) provide a list to the review team members of each fatality to be reviewed at the meeting; and
- (3) ensure that the review team operates according to the protocols developed by the review team.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.005. REVIEW PROCEDURE. (a) The review team of the county in which the event that was the cause of the unexpected death occurred, as stated on the death certificate or as otherwise indicated by the medical examiner or justice of the peace notified of the death, may review the death.

(b) On receipt of the list of fatalities under Section 672.004, each review team member shall review available records for information regarding each listed unexpected death.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.006. ACCESS TO INFORMATION. (a) A review team may request information and records regarding adult deaths resulting from suicide, family violence, or abuse as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

- (1) medical, dental, and mental health care information;
- and

(2) information and records maintained by any state or local government agency, including:

- (A) a birth certificate;
- (B) law enforcement investigative data;
- (C) medical examiner investigative data;
- (D) juvenile court records;
- (E) parole and probation information and records; and
- (F) adult protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information or records relating to the deceased adult shall provide the information or records to the review team. A law enforcement agency or a medical examiner may decline to provide investigative data to a review team until after the conclusion of the investigation.

(c) This section does not authorize the release of the original or copies of the mental health or medical records of any member of the deceased adult's family, the guardian or caretaker of the deceased adult, or an alleged or suspected perpetrator of family violence or abuse of the adult that are in the possession of any state or local government agency as provided in Subsection (a)(2). Information relating to the mental health or medical condition of a member of the deceased adult's family, the guardian or caretaker of the deceased adult, or the alleged or suspected perpetrator of family violence or abuse of the deceased adult acquired as part of an investigation by a state or local government agency as provided in Subsection (a)(2) may be provided to the review team.

(d) This section does not authorize any interference with a criminal investigation, inquest, or autopsy.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.007. MEETING OF REVIEW TEAM. (a) A meeting of a review team is closed to the public and not subject to the open meetings law, Chapter 551, Government Code.

(b) This section does not prohibit a review team from requesting the attendance at a closed meeting of a person who is not a member of the review team and who has information regarding a fatality resulting from suicide, family violence, or abuse.

(c) Except as necessary to carry out a review team's purpose



and duties, members of a review team and persons attending a review team meeting may not disclose what occurred at the meeting.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.008. REPORT. (a) Not later than December 15 of each even-numbered year, each review team shall submit to the Department of Protective and Regulatory Services a report on deaths reviewed.

(b) Subject to Section 672.009, the Department of Protective and Regulatory Services shall make the reports received under Subsection (a) available to the public.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.009. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY.

(a) Information and records acquired by a review team in the exercise of its purpose and duties under this chapter are confidential and exempt from disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the review team's purpose and duties.

(b) A report of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual and is not otherwise confidential or privileged.

(c) A member of a review team may not disclose any information that is confidential under this section.

(d) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

(e) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding. A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under this subsection solely because the document or information was acquired by a review team in

the exercise of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 268 (H.B. 3303), Sec. 1, eff. September 1, 2009.

Sec. 672.010. CIVIL LIABILITY FOR DISCLOSURE OF INFORMATION.

Subject to the limits described in Section 101.023(b), Civil Practice and Remedies Code, a team organized pursuant to this chapter, or any member thereof, may be civilly liable for damages caused by the disclosure of information gathered pursuant to an investigation if such disclosure is made in violation of Section 672.007 and Section 672.009.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.011. GOVERNMENTAL UNIT. Subject to Section 672.010, a review team established under this chapter is a local governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.012. REPORT OF UNEXPECTED FATALITY. (a) A person, including a health care provider, who knows of the death of an adult that resulted from, or that occurred under circumstances indicating death may have resulted from, suicide, family violence, or abuse, shall immediately report the death to the medical examiner of the county in which the death occurred or, if the death occurred in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.013. PROCEDURE IN THE EVENT OF REPORTABLE DEATH. (a) A medical examiner or justice of the peace notified of a death under Section 672.012 may hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death was caused by suicide, family violence, or abuse.

(b) Without regard to whether an inquest is held under Subsection (a), the medical examiner or justice of the peace shall immediately notify the county or entity designated under Section 672.002(b) of:

(1) each notification of death received under Section 672.012;

(2) each death found to be caused by suicide, family violence, or abuse; or

(3) each death that may be a result of suicide, family violence, or abuse, without regard to whether the suspected suicide, family violence, or abuse is determined to be a sole or contributing cause and without regard to whether the cause of death is conclusively determined.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

#### **CHAPTER 673. SUDDEN INFANT DEATH SYNDROME**

Sec. 673.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of health.

(2) "Department" means the Texas Department of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 673.002. AUTOPSY. (a) The death in this state of a child 12 months old or younger shall be immediately reported to the justice of the peace, medical examiner, or other proper official as prescribed by law if the child dies suddenly or is found dead and if the cause of death is unknown.

(b) The justice of the peace or medical examiner shall inform the child's legal guardian or parents that an autopsy shall be performed on the child. The state shall reimburse a county \$500 for the cost of the autopsy if the primary cause of death of the child is sudden infant death syndrome. The department shall adopt rules that:

(1) define sudden infant death syndrome; and

(2) describe the method for obtaining reimbursement for the cost of an autopsy.

(c) Reimbursement required by Subsection (b) of this section is subject to the availability of funds.

(d) After the autopsy is completed, the child's parents or legal guardian shall be notified of the autopsy results.

(e) This section does not affect the duties of the justice of the peace or medical examiner prescribed by other laws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 785, Sec. 1, eff. Sept. 1, 1999.

Sec. 673.003. DESIGNATION OF SUDDEN INFANT DEATH SYNDROME AS PRIMARY CAUSE OF DEATH. Sudden infant death syndrome may be used as a primary cause of death on a death certificate required by Chapter 193.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 673.004. MODEL PROGRAM. (a) The department shall develop a model program that can be used to provide information and follow-up consultation about sudden infant death syndrome and its characteristic grief-guilt reaction. The program should humanize and maximize understanding and the handling of sudden infant death syndrome in this state.

(b) The department shall distribute the program to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens.

(c) The department may appoint an advisory committee to provide assistance in developing the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 674. FETAL AND INFANT MORTALITY REVIEW**

Sec. 674.001. DEFINITIONS. In this chapter:

(1) "Decedent" means:

(A) a person for whom a fetal death certificate must be filed; or

(B) a deceased infant.

(2) "Fetal death certificate" means a death certificate filed for any fetus weighing 350 grams or more or, if the weight is unknown, a fetus age 20 weeks or more as calculated from the start date of the last normal menstrual period to the date of delivery.

(3) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including mental health evaluation or treatment.

(4) "Infant" means a child younger than one year of age.

(5) "Local health authority" means:

(A) a municipal or county health authority;

(B) a director of a local health department or public health district; or

(C) a regional director of a public health region.

(6) "Review" means a reexamination of information regarding a decedent from relevant agencies, professionals, health care providers, and the family of the decedent.

(7) "Review team" means the fetal and infant mortality review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.002. REVIEW TEAM. (a) A fetal and infant mortality review team may be established only:

(1) by a local health authority or other local health official or by the Department of State Health Services; or

(2) under a contract or in accordance with a memorandum of agreement with a local health authority or other local health official or the Department of State Health Services.

(b) Local health authorities or other local health officials for two or more adjacent counties or municipalities may join to establish a joint review team.

(c) A review team must be composed of culturally diverse members representing multiple disciplines, including professionals and representatives of agencies that provide services or community resources for families in the community and community representatives. The review team may include:

(1) a physician, including a pediatrician, an obstetrician,

or a physician practicing in another relevant specialty;

- (2) a registered nurse;
- (3) a certified nurse-midwife or licensed midwife;
- (4) a county attorney or a designee of a county attorney;
- (5) a representative of a school district;
- (6) a representative of the local health department;
- (7) a forensic pathologist;
- (8) a mental health professional;
- (9) a representative from a local hospital;
- (10) a local registrar of births and deaths;
- (11) a person working in a supervisory position in local administration of the state Medicaid program;
- (12) a person working with local implementation of the Special Supplemental Nutrition Program for Women, Infants, and Children;
- (13) an educator;
- (14) a pastoral counselor;
- (15) a member of the health committee of a chamber of commerce; and
- (16) other community representatives.

(d) Members of a review team may select additional members according to the resources of the review team and its needs.

(e) The review team shall select a presiding officer from its members.

(f) A local health authority or other local health official or the Department of State Health Services is not required to establish a review team for a particular municipality or county.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.003. PURPOSE AND POWERS AND DUTIES OF REVIEW TEAM.

(a) The purpose of a review team is to:

- (1) improve the health and well-being of women, infants, and families;
- (2) reduce racial disparities in the rates of and the overall rates of fetal and infant mortality;
- (3) facilitate the operations of the review team and train review team members on the review team process; and

(4) develop and deliver reports of findings to the community.

(b) For a death or fetal death subject to review, the review team shall collect information relating to the death of the decedent, including medical, dental, and mental health care records or information, autopsy reports, social services records, and other pertinent records related to the decedent and the family of the decedent.

(c) Before review at a meeting of the review team, the names and addresses of the decedent and the decedent's family and the name and address of each health care provider that provided services to the decedent or decedent's family shall be removed from information collected under Subsection (b). A summary of the information, with the identifying information described by this subsection removed, shall be prepared for consideration of the review team.

(d) The review team shall:

- (1) compile statistics of fetal and infant mortality;
- (2) analyze the causes of fetal and infant mortality; and
- (3) recommend measures to decrease fetal and infant mortality to a community action team formed for this purpose or to state or local governmental officials or other appropriate members of the community.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.004. GOVERNMENTAL UNIT. A review team is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A review team is a unit of local government under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.005. MEETINGS. (a) Meetings of a review team are closed to the public and are not subject to Chapter 551, Government Code.

(b) A member of a review team participating in the review of a death or fetal death, and any person employed by or acting in an

advisory capacity to the review team and who provides counsel or services to the review team, are immune from civil or criminal liability arising from information presented in a review team meeting or recommendations resulting from the meeting.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.006. DISCLOSURE OF INFORMATION TO REVIEW TEAM. (a) A review team may request information regarding a decedent or the decedent's family as necessary to carry out the review team's purpose and duties, including any information described by Section 674.003(b).

(b) On the request of the review team, a health care provider or other custodian of the requested information shall provide the information to the review team. The information shall be provided without the authorization of the decedent's parent, guardian, or other representative.

(c) A health care provider or other person who provides information to a review team is not subject to a civil action for damages or other relief as a result of having provided the information. This subsection does not apply if the information provided was false and the health care provider or other person knew or had reason to know that the information was false.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.007. CONFIDENTIALITY OF RECORDS; PRIVILEGE. (a) Information is confidential for purposes of this chapter if the disclosure of the information would compromise the privacy of the decedent or the decedent's family. Confidential information includes any information pertaining to the decedent's death.

(b) Confidential information that is acquired by the review team and that permits the identification of an individual or health care provider is privileged and may not be disclosed to any person except to the extent necessary to carry out the purposes of the review team. Information that may not be disclosed under this subsection includes:



(1) names and addresses of the decedent or the decedent's family;

(2) services received by the decedent or the decedent's family;

(3) the social and economic condition of the decedent or the decedent's family;

(4) medical, dental, and mental health care information related to the decedent or the decedent's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of health care providers that provided services to the decedent or the decedent's family.

(c) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are confidential and are not subject to disclosure under Chapter 552, Government Code. This subsection does not prevent a review team from releasing information described by Subsection (d) or (e).

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

(1) total expenditures made for specified purposes;

(2) the number of families served by particular health care providers or agencies;

(3) aggregated data on social and economic conditions;

(4) medical data and information related to health care services that do not include any identifying information relating to a decedent or the decedent's family; and

(5) other statistical information.

(e) A review team may publish statistical studies and research reports based on information that is confidential under this section, provided that the information published may not identify a decedent or the decedent's family and may not include any information that could be used to identify a decedent or the decedent's family.

(f) A review team shall adopt and follow practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.008. IMMUNITY FROM SUBPOENA AND DISCOVERY. (a) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are privileged, are not subject to subpoena or discovery, and may not be introduced into evidence in any civil or criminal proceeding against a member of the family of a decedent or a health care provider.

(b) A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under Subsection (a) solely because the document or other information was presented during a meeting of a review team or because a record of the document or other information is maintained by the review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.009. UNAUTHORIZED DISCLOSURE BY REVIEW TEAM MEMBER; OFFENSE. (a) A person commits an offense if the person is a member of a review team and the person knowingly:

(1) discloses confidential information in violation of Section 674.007; or

(2) inspects confidential information without authority granted in accordance with procedures established by the review team.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.010. IMMUNITY. A member of a review team is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the review team if the member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the review team member.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.011. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be disclosed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

#### **SUBTITLE B. DISPOSITION OF THE BODY**

##### **CHAPTER 691. ANATOMICAL BOARD OF THE STATE OF TEXAS**

##### **SUBCHAPTER A. ORGANIZATION OF ANATOMICAL BOARD OF THE STATE OF TEXAS**

Sec. 691.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Anatomical Board of the State of Texas.
- (2) "Body" means a human corpse.
- (3) "Anatomical specimen" means a part of a human corpse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 1, eff. Sept. 1, 2003.

Sec. 691.002. COMPOSITION OF BOARD. (a) The Anatomical Board of the State of Texas is composed of one representative from each school or college of chiropractic, osteopathy, medicine, or dentistry incorporated in this state.

(b) On March 1 of each odd-numbered year, the chief executive officer of each institution described by Subsection (a) shall appoint as the institution's representative on the board one professor of surgery or of basic anatomical sciences who is associated with the institution.

(c) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.004. LOBBYIST RESTRICTIONS. A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.005. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 691.002(a) for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Section 691.002(a) for appointment to the board;

(3) violates a prohibition established by Section 691.004;

(4) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during any two calendar years, unless the absence is excused by a majority of the board members.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a member of the board exists.

(c) If the secretary-treasurer of the board believes that a potential ground for removal exists, the secretary-treasurer shall notify the chairman of the board of that ground. The chairman shall notify the chief executive officer of the institution represented by that member that a potential ground for removal exists.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.006. REIMBURSEMENT. A board member is not entitled to compensation but is entitled to reimbursement for actual travel expenses incurred in serving on the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.007. MINUTES; RECORDS. (a) The board may adopt rules for its administration.

(b) The board shall keep complete minutes of its transactions.

(c) The board shall keep identification records of each body donated to the board and of each body or anatomical specimen distributed by the board.

(d) A board member or a district or county attorney may at any time inspect minutes or records required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 2, eff. Sept. 1, 2003.

Sec. 691.008. FEES; AUDITS. (a) The board may set and collect reasonable and necessary fees for receiving and distributing bodies and anatomical specimens.

(b) The secretary-treasurer of the board may deposit fees collected under this section in local accounts outside the state treasury.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(99), eff. June 17, 2011.

(d) The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 210, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 948, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. [1179](#)), Sec. 25(99), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 10.005, eff. September 1, 2013.

Sec. 691.009. INFORMATION TO MEMBERS AND EMPLOYEES. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and

their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.010. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which service recipients can be notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification by including the information on each written contract relating to bodies willed or donated to an entity regulated by the board or authorized by the board to receive bodies.

(c) The board shall keep an information file about each complaint filed with the board relating to its functions. If a written complaint is filed with the board relating to a person or an entity regulated by the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. DONATION AND DISTRIBUTION OF BODIES AND ANATOMICAL SPECIMENS**

Sec. 691.021. DEFINITION. In this subchapter, "political subdivision" means a municipality, county, or special district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.022. GENERAL DUTIES. (a) The board shall distribute bodies and anatomical specimens to institutions authorized to receive them.

(b) The board shall adopt rules to ensure that each body and anatomical specimen in the custody of the board or an institution represented on the board is treated with respect.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 5, eff. Sept. 1, 2003.

Sec. 691.0225. INFORMATIONAL DOCUMENT. The board shall develop a document to inform a person making a gift of a decedent's body or anatomical specimen for purposes of education or research of the risks and benefits associated with donation. The board shall make the document available on the board's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 1, eff. September 1, 2011.

Sec. 691.023. DUTY TO DELIVER CERTAIN BODIES TO BOARD. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution having charge or control of a body not claimed for burial or a body required to be buried at public expense shall:

(1) notify the board or the board's representative of the body's existence when the body comes into the person's possession, charge, or control if notified in writing to do so by the board or the board's representative;

(2) deliver the body in accordance with the direction of the board; and

(3) allow the board, the board's representative, or a physician designated by the board who complies with this chapter to remove the body to be used for the advancement of medical science.

(b) If the board does not require a political subdivision or agency of the political subdivision to deliver a body under this section, the political subdivision shall pay all costs of preparation for burial, including costs of embalming.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.024. PERSONS WHO MAY CLAIM BODY FOR BURIAL. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution is not required to give notice or deliver a body as required by Section 691.023 if the body is claimed for burial.

(b) A relative, bona fide friend, or representative of an organization to which the deceased belonged may claim the body for burial. The person in charge of the body shall release the body to the claimant without requiring payment when the person is satisfied that the claimed relationship exists.

(c) A claimant alleging to be a bona fide friend or a representative of an organization to which the deceased belonged must present a written statement of the relationship under which the claimant qualifies as a bona fide friend or organization representative.

(d) For purposes of this section, a bona fide friend means a person who is like one of the family, and does not include:

(1) an ordinary acquaintance;

(2) an officer, employee, or representative of the state, of a political subdivision, or of an institution having charge of a body not claimed for burial or a body required to be buried at public expense;

(3) an employee of an entity listed in Subdivision (2) with which the deceased was associated; or

(4) a patient, inmate, or ward of an institution with which the deceased was associated.

(e) A person covered by Subsection (d) may qualify as a bona fide friend if the friendship existed before the deceased entered the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.025. PROCEDURE AFTER DEATH. (a) If a body is not claimed for burial immediately after death, the body shall be embalmed within 24 hours.

(b) For 72 hours after death, the person in charge of the institution having charge or control of the body shall make due



effort to find a relative of the deceased and notify the relative of the death. If the person is not able to find a relative, the person shall file with the county clerk an affidavit stating that the person has made a diligent inquiry to find a relative and stating the inquiry the person made.

(c) A body that is not claimed for burial within 48 hours after a relative receives notification shall be delivered as soon as possible to the board or the board's representative.

(d) A relative of the deceased may claim the body within 60 days after the body has been delivered to an institution or other entity authorized to receive the body. The body shall be released without charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.026. BODY OF TRAVELER. If an unclaimed body is the body of a traveler who died suddenly, the board shall direct the institution receiving the body to retain the body for six months for purposes of identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.027. AUTOPSY. Only the board may grant permission to perform an autopsy on an unclaimed body. The board may grant permission after receiving a specific request for an autopsy that shows sufficient evidence of medical urgency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.028. DONATION OF BODY BY WRITTEN INSTRUMENT. (a) An adult living in this state who is of sound mind may donate his body by will or other written instrument to the board, a medical or dental school, or another donee authorized by the board, to be used for the advancement of medical science.

(b) To be effective, the donor must sign the will or other written instrument and it must be witnessed by two adults. The donor is not required to use a particular form or particular words in making the donation, but the will or other instrument must clearly

convey the donor's intent.

(c) Appointment of an administrator or executor or acquisition of a court order is not necessary before the body may be delivered under this chapter.

(d) A donor may revoke a donation made under this section by executing a written instrument in a manner similar to the original donation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 6, eff. Sept. 1, 2003.

Sec. 691.029. AUTHORITY TO ACCEPT BODIES FROM OUTSIDE THE STATE. The board may receive a body transported to the board from outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.030. BOARD'S AUTHORITY TO DISTRIBUTE BODIES AND ANATOMICAL SPECIMENS. (a) The board or the board's representative shall distribute bodies donated to it and may redistribute bodies donated to medical or dental schools or other donees authorized by the board to schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state, to physicians, and to other persons as provided by this section.

(b) In making the distribution, the board shall give priority to the schools and colleges that need bodies for lectures and demonstrations.

(c) If the board has remaining bodies, the board or the board's representative shall distribute or redistribute those bodies to the schools and colleges proportionately and equitably according to the number of students in each school or college receiving instruction or demonstration in normal or morbid anatomy and operative surgery. The dean of each school or college shall certify that number to the board when required by the board.

(d) The board may transport a body or anatomical specimen to an authorized recipient in another state if the board determines that the supply of bodies or anatomical specimens in this state exceeds the need for bodies or anatomical specimens in this state and if:

(1) the deceased donated his body in compliance with

Section 691.028 and at the time of the donation authorized the board to transport the body outside this state; or

(2) the body was donated in compliance with Chapter 692A and the person authorized to make the donation under Section 692A.009 authorized the board to transport the body outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 3, eff. September 1, 2009.

Sec. 691.031. TRANSPORTATION OF BODIES; RECORDS. (a) The board shall adopt rules to ensure that:

(1) each body or anatomical specimen received or distributed by the board is properly transported;

(2) a label with the statement "CONTENTS DERIVED FROM DONATED HUMAN TISSUE" is affixed to the container in which the body or anatomical specimen is transported; and

(3) each person who has control or possession of a body or anatomical specimen:

(A) satisfactorily completes the information required on a chain-of-custody form prescribed by the board;

(B) maintains a copy of the form for the person's records; and

(C) transfers the form to any other person to whom control or possession of the body or anatomical specimen is transferred.

(b) The board may employ a public carrier to transport bodies or anatomical specimens received or distributed by the board.

(c) Each body or anatomical specimen shall be carefully deposited and transported with the least possible public display.

(d) A person or institution who sends a body or anatomical specimen under this chapter shall keep on permanent file a description of the body or anatomical specimen that includes the deceased's name, if known, color, sex, age, place and supposed cause of death, and any other information available for identification of the body or anatomical specimen, such as the existence of scars or deformities.

(e) The sender shall mail or otherwise safely convey to the person or institution to whom the body is sent a copy of the description required by Subsection (d). The person or institution receiving the body or anatomical specimen shall immediately and safely transmit to the sender a receipt containing the full terms of the description furnished by the sender.

(f) The sender and receiver of each body or anatomical specimen shall file the records required under this section in accordance with board rules so that the board or a district or county attorney may inspect the records at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 2, eff. September 1, 2011.

Sec. 691.032. COSTS OF DISTRIBUTION. A person or institution receiving a body or anatomical specimen under this chapter shall pay in a manner specified by the board, or as otherwise agreed on, all costs incurred in distributing the body or anatomical specimen so that the state, a county, a municipality, or an officer, employee, or representative of the state, a county, or a municipality does not incur any expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 9, eff. Sept. 1, 2003.

Sec. 691.033. USE OF BODIES AND ANATOMICAL SPECIMENS. (a) To further medical science, a school, college, or person designated by the board may dissect, operate on, examine, and experiment on a body or anatomical specimen distributed under this chapter.

(b) A school, college, or person shall keep a permanent record of each body or anatomical specimen received from the board or the board's representative. The record must be sufficient to identify the body or anatomical specimen and may be inspected by the board or the board's representative.

(c) A law relating to the prevention of mutilation of a body does not apply to a dissection, operation, examination, or experiment

performed under this section.

(d) To aid prosecutions under Section 42.08, Penal Code, the board shall adopt rules that clearly state the activities that are authorized by the board in relation to the dissection of a body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.42, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 948, Sec. 10, eff. Sept. 1, 2003.

Sec. 691.034. REGULATION OF PERSONS AND INSTITUTIONS USING BODIES AND ANATOMICAL SPECIMENS. (a) The board shall inspect and may approve institutions for the receipt and use of bodies and anatomical specimens under this chapter.

(b) The board may investigate a person or institution if the board has reason to believe that the person or institution has improperly used a body or anatomical specimen.

(c) The board may suspend or revoke a person's or institution's authorization to receive and dissect bodies or anatomical specimens if the board determines that the person or institution has improperly used a body or anatomical specimen.

(d) A person or institution is entitled to a hearing before the board or a hearing examiner appointed by the board before the board may revoke the person's or institution's authorization to receive and dissect bodies or anatomical specimens. The board shall make all final decisions to suspend or revoke an authorization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 11, eff. Sept. 1, 2003.

Sec. 691.035. CRIMINAL PENALTY. (a) A person commits an offense if the person has a duty imposed under this chapter and refuses, neglects, or omits to perform the duty as required by this chapter.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**Text of chapter as repealed by Acts 2009, 81st Leg., R.S., Ch. 186  
(H.B. 2027), Sec. 11 effective September 1, 2009  
CHAPTER 692. TEXAS ANATOMICAL GIFT ACT**

Sec. 692.003. MANNER OF EXECUTING GIFT OF OWN BODY.

(d) A gift made by a document other than a will is effective on the death of the donor. The document may be a card designed to be carried by the donor or another record signed by the donor or other person making the gift. A statement or symbol in an online donor registry and authorized by the donor indicating the donor has made an anatomical gift may also serve as a document making a gift. To be effective, the document must be signed by the donor in the presence of two witnesses except as otherwise provided by Subchapter Q, Chapter 521, Transportation Code, this subsection, or other law. If the donor cannot sign the document, a person may sign the document for the donor at the donor's direction and in the presence of the donor and two witnesses. The witnesses to the signing of a document under this subsection must sign the document in the presence of the donor. Delivery of the document during the donor's lifetime is not necessary to make the gift valid. An online donation registration does not require the consent of another person or require two witnesses. The online registration constitutes a legal document under this chapter and remains binding after the donor's death.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 291, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.211, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 225, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 831 (S.B. 1803), Sec. 2, eff. September 1, 2009.

**CHAPTER 692A. REVISED UNIFORM ANATOMICAL GIFT ACT**

Sec. 692A.001. SHORT TITLE. This chapter may be cited as the Revised Uniform Anatomical Gift Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(A) authorized to make health care decisions on the principal's behalf by a medical power of attorney; or

(B) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Commissioner" means the commissioner of state health services.

(5) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(6) "Department" means the Department of State Health Services.

(7) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 692A.011.

(8) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(9) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(10) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(11) "Driver's license" means a license or permit issued by the Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(14) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(15) "Identification card" means an identification card issued by the Department of Public Safety.

(16) "Imminent death" means a patient who requires mechanical ventilation, has a severe neurologic injury, and meets certain clinical criteria indicating that neurologic death is near or a patient for whom withdrawal of ventilatory support is being considered.

(17) "Know" means to have actual knowledge.

(18) "Minor" means an individual who is under 18 years of age.

(19) "Organ procurement organization" means a person designated by the secretary of the United States Department of Health and Human Services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

(21) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(23) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(24) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(25) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria



necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(29) "Refusal" means a record created under Section 692A.007 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(33) "Timely notification" means notification of an imminent death to the organ procurement organization within one hour of the patient's meeting the criteria for imminent death and before the withdrawal of any life sustaining therapies. With respect to cardiac death, timely notification means notification to the organ procurement organization within one hour of the cardiac death.

(34) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(35) "Tissue bank" means a person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(36) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(37) "Visceral organ" means the heart, kidney, or liver or another organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.003. APPLICABILITY. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.004. PERSONS AUTHORIZED TO MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH. Subject to Section 692A.008, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 692A.005 by:

- (1) the donor, if the donor is an adult or if the donor is a minor and is:
  - (A) emancipated; or
  - (B) authorized under state law to apply for a driver's license because the donor is at least 16 years of age and:
    - (i) circumstances allow the donation to be actualized prior to 18 years of age; and
    - (ii) an organ procurement organization obtains signed written consent from the minor's parent, guardian, or custodian as in Subdivision (3);
- (2) an agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;
- (3) a parent of the donor, if the donor is an unemancipated minor; or
- (4) the donor's guardian.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor may make an anatomical gift:

- (1) by authorizing a statement or symbol indicating that

the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in Subsection (b).

(b) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that the record has been signed and witnessed as provided in Subdivision (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to Subsection (b), another individual acting at the direction of the donor or the other person if the donor

or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to Subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that the record has been signed and witnessed as provided in Subdivision (1).

(c) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to Subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to Subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that the record has been signed and witnessed as provided in Subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in Subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to Section 692A.005 that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 692A.008(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. [2027](#)), Sec. 1, eff. September 1, 2009.

Sec. 692A.008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION. (a) Except as otherwise provided in Subsection (g) and subject to Subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 692A.006 is not a refusal and does not bar another person specified in Section 692A.004 or Section 692A.009 from making an anatomical gift of the donor's body or part under Section 692A.005 or Section 692A.010.

(c) If a person other than the donor makes an unrevoked

anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006, another person may not make, amend, or revoke the gift of the donor's body or part under Section 692A.010.

(d) A revocation of an anatomical gift of a donor's body or part under Section 692A.006 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 692A.005 or Section 692A.010.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part for one or more of the purposes set forth in Section 692A.004 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 692A.005 or Section 692A.010.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. [2027](#)), Sec. 1, eff. September 1, 2009.

Sec. 692A.009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) Subject to Subsections (b) and (c) and unless barred by Section 692A.007 or Section 692A.008, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately

before the decedent's death;

- (2) the spouse of the decedent;
- (3) adult children of the decedent;
- (4) parents of the decedent;
- (5) adult siblings of the decedent;
- (6) adult grandchildren of the decedent;
- (7) grandparents of the decedent;
- (8) an adult who exhibited special care and concern for the

decedent;

(9) the persons who were acting as the guardians of the person of the decedent at the time of death;

(10) the hospital administrator; and

(11) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in Subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 692A.011 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under Subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) A person authorized to make an anatomical gift under Section 692A.009 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to Subsection (c), an anatomical gift by a person authorized under Section 692A.009 may be amended or revoked orally or in a record by any member of a prior class who is reasonably

available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 692A.009 may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under Subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before the initiation of invasive procedures to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) an organ procurement organization to be used for transplantation, therapy, research, or education;

(2) a hospital to be used for research;

(3) subject to Subsection (d), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(4) an eye bank or tissue bank, except that use of a gift of a whole body must be coordinated through the Anatomical Board of the State of Texas;

(5) a forensic science program at:

(A) a general academic teaching institution as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code; or

(6) the Anatomical Board of the State of Texas.

(b) Except for donations described by Subsections (a)(1) through (5), the Anatomical Board of the State of Texas shall be the donee of gifts of bodies or parts of bodies made for the purpose of education or research that are subject to distribution by the board



under Chapter 691.

(c) A forensic science program that receives a donation under Subsection (a)(5) must submit a report to the Anatomical Board of the State of Texas on a quarterly basis that lists:

(1) the number of bodies or parts of bodies that the program received; and

(2) the method in which the program used the bodies or parts of bodies for education or research.

(d) If an anatomical gift to an individual under Subsection (a)(3) cannot be transplanted into the individual, the part passes in accordance with Subsection (i) in the absence of an express, contrary indication by the person making the anatomical gift.

(e) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) if the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) if the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) if the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; and

(4) if the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(f) For the purpose of Subsection (e), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(g) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(h) If a document of gift specifies only a general intent to

make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(i) For purposes of Subsections (d), (g), and (h), the following rules apply:

(1) if the part is an eye, the gift passes to the appropriate eye bank;

(2) if the part is tissue, the gift passes to the appropriate tissue bank; and

(3) if the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(j) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (a)(3), passes to the organ procurement organization as custodian of the organ.

(k) If an anatomical gift does not pass pursuant to Subsections (a) through (j) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(l) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 692A.005 or Section 692A.010 or if the person knows that the decedent made a refusal under Section 692A.007 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(m) Except as otherwise provided in Subsection (a)(3), nothing in this chapter affects the allocation of organs for transplantation or therapy.

(n) A donee may accept or reject a gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. [2027](#)), Sec. 1, eff. September 1, 2009.

Sec. 692A.012. SEARCH AND NOTIFICATION. The donor card of a person who is involved in an accident or other trauma shall accompany

the person to the hospital or other health care facility. The driver's license or personal identification certificate indicating an affirmative statement of gift of a person who is involved in an accident or other trauma shall accompany the person to the hospital or health care facility if the person does not have a donor card.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) On or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 692A.011.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary

to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 692A.011 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under Subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) On the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) On referral by a hospital under Subsection (a), a procurement organization shall make a reasonable search for any person listed in Section 692A.009 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 692A.011(k) and 693.002, the rights of the person to which a part passes under Section 692A.011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift wholly or partly. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 692A.011, on the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) The physician who attends the decedent at death or the physician who determines the time of the decedent's death may not participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from

the body of a donor that the physician or technician is qualified to remove.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.015. COORDINATION OF PROCUREMENT AND USE; HOSPITAL PROCEDURES. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. Each hospital must have a protocol that ensures its maintenance of an effective donation system in order to maximize organ, tissue, and eye donation. The protocol must:

(1) be available to the public during the hospital's normal business hours;

(2) establish a procedure for the timely notification to an organ procurement organization of individuals whose death is imminent or who have died in the hospital;

(3) establish procedures to ensure potential donors are declared dead by an appropriate practitioner in an acceptable time frame;

(4) establish procedures to ensure that hospital staff and organ procurement organization staff maintain appropriate medical treatment of potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place;

(5) ensure that all families are provided the opportunity to donate organs, tissues, and eyes, including vascular organs procured from asystolic donors;

(6) provide that the hospital use appropriately trained persons from an organ procurement organization, tissue bank, or eye bank to make inquiries relating to donations;

(7) provide for documentation of the inquiry and of its disposition in the decedent's medical records;

(8) require an organ procurement organization, tissue bank, or eye bank that makes inquiries relating to donations to develop a protocol for making those inquiries;

(9) encourage sensitivity to families' beliefs and circumstances in all discussions relating to the donations;

(10) provide that the organ procurement organization

determines medical suitability for organ donation and, in the absence of alternative arrangements by the hospital, the organ procurement organization determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose;

(11) ensure that the hospital works cooperatively with the designated organ procurement organization, tissue bank, and eye bank in educating staff on donation issues;

(12) ensure that the hospital works with the designated organ procurement organization, tissue bank, and eye bank in reviewing death records; and

(13) provide for monitoring of donation system effectiveness, including rates of donation, protocols, and policies, as part of the hospital's quality improvement program.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.016. SALE OR PURCHASE OF PARTS PROHIBITED. (a) Except as otherwise provided in Subsection (b), a person commits an offense if the person for valuable consideration knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death. An offense under this subsection is a Class A misdemeanor.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(c) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.017. OTHER PROHIBITED ACTS. (a) A person commits an offense if the person, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a

document of gift, an amendment or revocation of a document of gift, or a refusal. An offense under this section is a Class A misdemeanor.

(b) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.018. IMMUNITY. (a) A person who acts in good faith in accordance with this chapter is not liable for civil damages or subject to criminal prosecution for the person's action if the prerequisites for an anatomical gift are met under the laws applicable at the time and place the gift is made.

(b) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(c) A person who acts in good faith in accordance with this chapter is not liable as a result of the action except in the case of an act or omission of the person that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard. For purposes of this subsection, "good faith" in determining the appropriate person authorized to make a donation under Section 692A.009 means making a reasonable effort to locate and contact the member or members of the highest priority class who are reasonably available at or near the time of death.

(d) Neither a person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(e) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely on representations of an individual listed in Section 692A.009(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff.

September 1, 2009.

Sec. 692A.019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY. (a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed;

or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, had a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.020. GLENDA DAWSON DONATE LIFE-TEXAS REGISTRY; EDUCATION PROGRAM. (a) A nonprofit organization designated by the Department of Public Safety shall maintain and administer a statewide donor registry, to be known as the Glenda Dawson Donate Life-Texas Registry.

(b) The nonprofit organization administering the registry must include representatives from each organ procurement organization in this state.

(c) The nonprofit organization shall establish and maintain a statewide Internet-based registry of organ, tissue, and eye donors.

(d) The Department of Public Safety at least monthly shall electronically transfer to the nonprofit organization administering the registry the name, date of birth, driver's license number, most recent address, and any other relevant information in the possession of the Department of Public Safety for any person who indicates on the person's driver's license application under Section 521.401, Transportation Code, that the person would like to make an anatomical gift.



(e) The nonprofit organization administering the registry shall:

(1) make information obtained from the Department of Public Safety under Subsection (d) available to procurement organizations;

(2) allow potential donors to submit information in writing directly to the organization for inclusion in the Internet-based registry;

(3) maintain the Internet-based registry in a manner that allows procurement organizations to immediately access organ, tissue, and eye donation information 24 hours a day, seven days a week through electronic and telephonic methods; and

(4) protect the confidentiality and privacy of the individuals providing information to the Internet-based registry, regardless of the manner in which the information is provided.

(f) Except as otherwise provided by Subsection (e)(3) or this subsection, the Department of Public Safety, the nonprofit organization administering the registry, or a procurement organization may not sell, rent, or otherwise share any information provided to the Internet-based registry. A procurement organization may share any information provided to the registry with an organ procurement organization or a health care provider or facility providing medical care to a potential donor as necessary to properly identify an individual at the time of donation.

(g) The Department of Public Safety, the nonprofit organization administering the registry, or the procurement organizations may not use any demographic or specific data provided to the Internet-based registry for any fund-raising activities. Data may only be transmitted from the selected organization to procurement organizations through electronic and telephonic methods using secure, encrypted technology to preserve the integrity of the data and the privacy of the individuals providing information.

(h) In each office authorized to issue driver's licenses or personal identification certificates, the Department of Public Safety shall make available educational materials developed by the nonprofit organization administering the registry.

(i) The Glenda Dawson Donate Life-Texas Registry fund is created as a trust fund outside the state treasury to be held by the comptroller and administered by the Department of Public Safety as trustee on behalf of the statewide donor registry maintained for the benefit of the citizens of this state. The fund is composed of money

deposited to the credit of the fund under Sections 502.405(b), 521.008, and 521.422(c), Transportation Code, as provided by those subsections. Money in the fund shall be disbursed at least monthly, without appropriation, to the nonprofit organization administering the registry to pay the costs of:

(1) maintaining, operating, and updating the Internet-based registry and establishing procedures for an individual to be added to the registry;

(2) designing and distributing educational materials for prospective donors as required under this section; and

(3) providing education under this chapter.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(k) To the extent funds are available and as part of the donor registry program, the nonprofit organization administering the registry may educate residents about anatomical gifts. The education provided under this section shall include information about:

(1) the laws governing anatomical gifts, including Subchapter Q, Chapter 521, Transportation Code, Chapter 693, and this chapter;

(2) the procedures for becoming an organ, eye, or tissue donor or donee; and

(3) the benefits of organ, eye, or tissue donation.

(l) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(m) The nonprofit organization administering the registry may:

(1) implement a training program for all appropriate Department of Public Safety and Texas Department of Transportation employees on the benefits of organ, tissue, and eye donation and the procedures for individuals to be added to the Internet-based registry; and

(2) conduct the training described by Subdivision (1) on an ongoing basis for new employees.

(n) The nonprofit organization administering the registry may develop a program to educate health care providers and attorneys in this state about anatomical gifts.

(o) The nonprofit organization administering the registry shall encourage:

(1) attorneys to provide organ donation information to clients seeking advice for end-of-life decisions;

(2) medical and nursing schools in this state to include mandatory organ donation education in the schools' curricula; and

(3) medical schools in this state to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

(p) The nonprofit organization administering the registry may not use the registry to solicit voluntary donations of money from a registrant.

(q) Except as provided by Subsection (p), the nonprofit organization administering the registry may accept voluntary donations of money and perform fund-raising on behalf of the registry for the purpose of supporting registering donors.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 554 (H.B. 2904), Sec. 1, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 6(a), eff. May 18, 2013.

Sec. 692A.021. EFFECT OF ANATOMICAL GIFT ON ADVANCE DIRECTIVE.

(a) In this section:

(1) "Advance directive" means a medical power of attorney or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or

therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if the agent is not reasonably available, another person authorized by law other than this chapter to make health-care decisions on behalf of the prospective donor, shall act on the prospective donor's behalf to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 692A.009. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor.

(c) If the conflict cannot be resolved, an expedited review of the matter must be initiated by an ethics or medical committee of the appropriate health care facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.022. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.023. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify, limit, or supersede Section 101(a) of that Act (15 U.S.C. Section 7001(a)), or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff.

September 1, 2009.

**CHAPTER 693. REMOVAL OF BODY PARTS, BODY TISSUE, AND CORNEAL TISSUE**  
**SUBCHAPTER A. REMOVAL OF BODY PARTS OR TISSUE**

Sec. 693.001. DEFINITION. In this subchapter, "visceral organ" means the heart, kidney, liver, or other organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.002. REMOVAL OF BODY PART OR TISSUE FROM DECEDENT WHO DIED UNDER CIRCUMSTANCES REQUIRING AN INQUEST. (a) (1) On a request from an organ procurement organization, as defined by Section 692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of organs from a decedent who died under circumstances requiring an inquest by the medical examiner, justice of the peace, or county judge if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003.

(2) If no autopsy is required, the organs to be transplanted shall be released in a timely manner to the organ procurement organization, as defined by Section 692A.002, for removal and transplantation.

(3) If an autopsy is required and the medical examiner, justice of the peace, county judge, or designated physician determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal and transplantation. The autopsy will be performed in a timely manner following the removal of the organs.

(4) If the medical examiner is considering withholding one or more organs of a potential donor for any reason, the medical examiner shall be present during the removal of the organs. In such case, the medical examiner may request a biopsy of those organs or deny removal of the anatomical gift. If the medical examiner denies removal of the anatomical gift, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall

provide the explanation to:

(A) the organ procurement organization; and

(B) any person listed in Section 692A.009 who consented to the removal.

(5) If the autopsy is not being performed by a medical examiner and one or more organs may be withheld, the justice of the peace, county judge, or designated physician shall be present during the removal of the organs and may request the biopsy or deny removal of the anatomical gift. If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subdivisions (4)(A) and (B).

(6) If, in performing the duties required by this subsection, the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician is required to be present at the hospital to examine the decedent prior to removal of the organs or during the procedure to remove the organs, the qualified organ procurement organization shall on request reimburse the county or the entity designated by the county for the actual costs incurred in performing such duties, not to exceed \$1,000. Such reimbursements shall be deposited in the general fund of the county. The payment shall be applied to the additional costs incurred by the office of the medical examiner, justice of the peace, or county judge in performing such duties, including the cost of providing coverage beyond regular business hours. The payment shall be used to facilitate the timely procurement of organs in a manner consistent with the preservation of the organs for the purposes of transplantation.

(7) At the request of the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician, the health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the medical examiner, justice of the peace, or county judge a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

(b) On a request from a tissue bank, as defined by Section 692A.002, the medical examiner may permit the removal of tissue believed to be clinically usable for transplants or other therapy or treatment from a decedent who died under circumstances requiring an

inquest if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003 or, if consent is not required by those sections, no objection by a person listed in Section 692A.009 is known by the medical examiner. If the medical examiner denies removal of the tissue, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

(1) the tissue bank; and

(2) the person listed in Section 692A.009 who consented to the removal.

(c) If the autopsy is not being performed by a medical examiner, the justice of the peace, county judge, or designated physician may permit the removal of tissue in the same manner as a medical examiner under Subsection (b). If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subsections (b)(1) and (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 523, Sec. 1, eff. June 13, 1995; Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 5, eff. September 1, 2009.

Sec. 693.003. CONSENT NOT REQUIRED IN CERTAIN CIRCUMSTANCES. If a person listed in Section 692A.009 cannot be identified and contacted within four hours after death is pronounced and the county court determines that no reasonable likelihood exists that a person can be identified and contacted during the four-hour period, the county court may permit the removal of a nonvisceral organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 6, eff. September 1, 2009.

Sec. 693.005. IMMUNITY FROM DAMAGES IN CIVIL ACTION. In a civil action brought by a person listed in Section 692A.009 who did not object before the removal of tissue or a body part specified by Section 693.002, a medical examiner, justice of the peace, county judge, medical facility, physician acting on permission of a medical examiner, justice of the peace, or county judge, or person assisting a physician is not liable for damages on a theory of civil recovery based on a contention that the plaintiff's consent was required before the body part or tissue could be removed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 7, eff. September 1, 2009.

Sec. 693.006. REMOVAL OF CORNEAL TISSUE. On a request from an eye bank, as defined in Section 692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of corneal tissue subject to the same provisions that apply to removal of a visceral organ on the request of a procurement organization under this subchapter. The provisions of Chapter 692A relating to immunity and consent apply to the removal of the corneal tissue.

Added by Acts 2005, 79th Leg., Ch. 1069 (H.B. 1544), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 8, eff. September 1, 2009.

#### **SUBCHAPTER C. EYE ENUCLEATION**

Sec. 693.021. DEFINITION. In this chapter, "ophthalmologist" means a person licensed to practice medicine who specializes in treating eye diseases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



Sec. 693.022. PERSONS WHO MAY ENUCLEATE EYE AS ANATOMICAL GIFT. Only the following persons may enucleate an eye that is an anatomical gift:

- (1) a licensed physician;
- (2) a licensed doctor of dental surgery or medical dentistry;
- (3) a licensed embalmer; or
- (4) a technician supervised by a physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.023. EYE ENUCLEATION COURSE. Each person, other than a licensed physician, who performs an eye enucleation must complete a course in eye enucleation taught by an ophthalmologist and must possess a certificate showing that the course has been completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.024. REQUISITES OF EYE ENUCLEATION COURSE. The course in eye enucleation prescribed by Section 693.023 must include instruction in:

- (1) the anatomy and physiology of the eye;
- (2) maintaining a sterile field during the procedure;
- (3) use of the appropriate instruments; and
- (4) procedures for the sterile removal of the corneal button and the preservation of it in a preservative fluid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 694. BURIAL**

Sec. 694.001. DUTIES OF TEXAS DEPARTMENT OF HEALTH. The Texas Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING DISPOSITION OF BODY OF DECEASED PAUPERS. (a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

(d) If any cash remains after the county has paid the costs of disposing of the body under Subsection (c), the county shall place the cash in trust. A person having a claim to the money in trust must exercise the right to collect the money not later than the first anniversary of the date of disposition of the pauper's body.

(e) A county may create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers and administering the county's body disposition activities. If money placed in a trust under Subsection (d) is not claimed by the first anniversary of the date of disposition of the pauper's body, the county may transfer the money to the fund created under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 211, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 404 (H.B. 1843), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 480 (S.B. 530), Sec. 1, eff. June 19, 2009.

Sec. 694.003. POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL. The governing body of a Type A general-law municipality may regulate the burial of the dead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 695. IN-CASKET IDENTIFICATION**

Sec. 695.001. DEFINITIONS. In this chapter:

(1) "Casket" means a container used to hold the remains of a deceased person.

(2) "Commission" means the Texas Funeral Service Commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.002. IDENTIFICATION OF DECEASED PERSON. The commission shall ensure a casket contains identification of the deceased person, including the person's name, date of birth, and date of death.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.003. RULES. The commission may adopt rules to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

**CHAPTER 696. DISPOSITION OF UNCLAIMED CREMATED REMAINS**

Sec. 696.001. DEFINITIONS. In this chapter:

(1) "Verification information" means data required by the United States Department of Veterans Affairs to verify whether a person is a veteran or a veteran's dependent eligible for burial in a veterans cemetery, including a copy of the person's death certificate and the person's name, service number, social security number, date of birth, date of death, and place of birth.

(2) "Veterans' service organization" means:

(A) a veterans' organization that is chartered by the United States Congress;

(B) a veterans' service organization recognized by the United States Department of Veterans Affairs; or

(C) a veterans' service organization that is organized for verifying whether a person is a veteran or a veteran's dependent and providing for interment of veterans and their dependents and that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986 by being listed as an exempt organization under Section 501(c)(3) or 501(c)(19) of that code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.002. APPLICABILITY. This chapter applies to any person who possesses unclaimed cremated remains, including a funeral establishment or funeral director licensed under Chapter 651, Occupations Code, a coroner, or a crematory.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.003. AUTHORIZATION TO RELEASE INFORMATION. A person who possesses unclaimed cremated remains may release to the United States Department of Veterans Affairs or a veterans' service organization verification information associated with the remains to verify whether the remains are the remains of a person who was a veteran or a veteran's dependent eligible to be interred in a veterans cemetery if:

(1) the person has possessed the cremated remains for at least five years;

(2) the person authorized to dispose of the decedent's remains under Section 711.002 has not claimed the cremated remains; and

(3) the person made a reasonable effort to locate a relative of the decedent to claim the remains, including publishing notice in a newspaper of general circulation in the county in which

the person is located, and more than 30 days have passed since the person first made an effort to locate a relative of the decedent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.004. TRANSFER OF UNCLAIMED CREMATED REMAINS. A person who receives notice from the United States Department of Veterans Affairs or a veterans' service organization that the unclaimed cremated remains are the remains of a veteran or veteran's dependent eligible to be interred in a veterans cemetery may:

(1) transport the cremated remains to the veterans cemetery for burial; or

(2) transfer the cremated remains to a veterans' service organization that will ensure that the cremated remains are interred in a veterans cemetery.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.005. CIVIL IMMUNITY. (a) A person who releases verification information as authorized by this chapter or who transfers cremated remains to a veterans' service organization or a veterans cemetery as authorized by this chapter is immune from civil liability for damages resulting from the release or transfer.

(b) A veterans' service organization that inters cremated remains in a veterans cemetery as authorized by this chapter is immune from civil liability for damages arising from the interment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

#### **SUBTITLE C. CEMETERIES AND CREMATORIES**

#### **CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(1-a) "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(2) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

(2-a) "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

(2-b) "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A) is an officer, agent, or employee of the cemetery organization in which the plot is located and who is exempt from registration under Subchapter C-1; or

(B) originally purchased the exclusive right of sepulture for personal use.

(3) "Cemetery organization" means:

(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or

(B) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(4) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(5) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(5-a) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

(6) "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(7) "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme heat and evaporation, which may include the processing or the pulverization of bone fragments.

(8) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(9) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(10) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(11) "Directors" means the governing body of a cemetery organization.

(12) "Entombment" means interment in a crypt.

(13) "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(14) "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(15) "Human remains" means the body of a decedent.

(16) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(17) "Interment right" means the right to inter the remains of one decedent in a plot.

(18) "Inurnment" means the placement of cremated remains in an urn.

(19) "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.

(20) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(20-a) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

(21) "Niche" means a space in a columbarium or cremains

receptacle used or intended to be used for the placement of cremated remains in an urn or other container.

(22) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(23) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(24) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(25) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

(26) "Plot owner" means a person:

(A) in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or

(B) who holds, from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.

(27) "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.

(28) "Remains" means either human remains or cremated remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 212, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1389, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. [350](#)), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 1, eff.



September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 1, eff. September 1, 2013.

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a) Except as provided by Subsection (1), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings; or
- (6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

- (1) the person's right to control the disposition is terminated; and
- (2) the right to control the disposition is passed to the following persons in the following priority:
  - (A) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or
  - (B) a person in a different priority class, in the priority listed in Subsection (a).

(a-2) If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10

U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

(b) The written instrument referred to in Subsection (a)(1) shall be in substantially the following form:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, \_\_\_\_\_,  
(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_

(name of agent)

in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AGENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_

(signature of agent)

Date of Signature: \_\_\_\_\_

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and

successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_

(signature of first successor)

Date of Signature: \_\_\_\_\_

2. Second Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_

(signature of second successor)

Date of Signature: \_\_\_\_\_

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name of principal).

\_\_\_\_\_  
(signature of notarial officer)

(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)

My commission expires:  
\_\_\_\_\_

(c) A written instrument is legally sufficient under Subsection (a)(1) if the wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

(e) If there is no person with the duty to inter under Subsection (a) and:

(1) an inquest is held, the person conducting the inquest shall inter the remains; and

(2) an inquest is not held, the county in which the death occurred shall inter the remains.

(f) A person who represents that the person knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under

this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(i) A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 707, Sec. 3, eff. June 17, 2011.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court of competent jurisdiction. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19, Penal Code, that involves family violence against the decedent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 213, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 967, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1385, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 95 (H.B. 74), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(28), eff. September 1, 2013.

Sec. 711.003. RECORDS OF INTERMENT. A record shall be kept of each interment in a cemetery. The record must include:

- (1) the date the remains are received;
- (2) the date the remains are interred;
- (3) the name and age of the person interred if those facts can be conveniently obtained; and
- (4) the identity of the plot in which the remains are interred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 3, eff. Sept. 1, 1993.

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:

- (1) the decedent's surviving spouse;
- (2) the decedent's surviving adult children;
- (3) the decedent's surviving parents;
- (4) the decedent's adult siblings; or
- (5) the adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a district court of the county in which the cemetery is located. Before the

date of application to the court for permission to remove remains under this subsection, notice must be given to:

(1) the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;

(2) each person whose consent is required for removal of the remains under Subsection (a); and

(3) any other person that the court requires to be served.

(d) For the purposes of Subsection (c) and except as provided by this subsection or Subsection (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains from a plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(e) Subsections (a)-(d) and (k) do not apply to the removal of remains:

(1) from one plot to another plot in the same cemetery, if the cemetery:

(A) is a family, fraternal, or community cemetery that is not larger than 10 acres;

(B) is owned or operated by an unincorporated association of plot owners not operated for profit;

(C) is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(D) is a public cemetery owned by this state, a county, or a municipality;

(2) by the cemetery organization from a plot for which the purchase price is past due and unpaid, to another suitable place;

(3) on the order of a court or person who conducts inquests; or

(4) from a plot in a cemetery owned and operated by the Veterans' Land Board.

(f) Except as is authorized for a justice of the peace acting

as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:

- (1) the date the remains are removed;
- (2) the name and age at death of the decedent if those facts can be conveniently obtained;
- (3) the place to which the remains are removed; and
- (4) the cemetery and plot from which the remains are removed.

(h) If the remains are not reinterred, the person who removes the remains shall:

- (1) make and keep a record of the disposition of the remains; and
- (2) not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains will not be reinterred.

(i) A person who removes remains from a cemetery shall give the cemetery organization operating the cemetery a copy of the record made as required by Subsections (g) and (h).

(j) A cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the written consent required under Subsection (a) if the cemetery seeks consent by sending written notice by certified mail, return receipt requested, to the last known address of the current owner of the plot from which the remains are to be removed or to the person designated under Subsection (a). The notice must indicate that the remains will be removed, the reason for the removal of the remains, and the proposed location of the reinterment of the remains. The cemetery may transfer the remains to another plot in accordance with this subsection if an objection is not received in response to the notice before the 31st day after the date the notice is sent. A cemetery may not remove remains under this subsection for a fraudulent purpose or to allow the sale of the plot in which the



remains are located to another person.

(k) In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains before the date on which the court is required to hear an application for permission to remove remains under Subsection (d), a cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the court hearing. A cemetery association that removes remains under this subsection shall send written notice of the removal by certified mail, return receipt requested, to the last known address of the person designated under Subsection (a) not later than the fifth day after the date the remains are removed. The notice must indicate that the remains were removed, the reason for the removal of the remains, and the location of the reinterment of the remains.

(l) For purposes of Subsections (d) and (k), "emergency circumstance" means:

- (1) a natural disaster; or
- (2) an error in the interment of remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 214, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 504, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 32, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 2, eff. September 1, 2009.

Sec. 711.007. NUISANCE; ABATEMENT AND INJUNCTION. (a) A district court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:

- (1) maintained, located, or used in violation of this chapter or Chapter 712; or
- (2) neglected so that it is offensive to the inhabitants of the surrounding section.

(b) The proceeding may be brought by:

- (1) the attorney general;

- (2) the Banking Commissioner of Texas;
  - (3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;
  - (4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);
  - (5) the owner of a residence:
    - (A) in or near the municipality in which the cemetery is located; or
    - (B) in the area proscribed for the location of a cemetery by Section 711.008;
  - (6) the Texas Funeral Service Commission; or
  - (7) the owner of a plot in the cemetery.
- (c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.
- (d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.
- (e) Notice of an action under this section must be provided to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.
- (f) In an action under this section, the court shall determine:
- (1) whether the cemetery nuisance must be abated by repair and restoration or by removal of the cemetery; and
  - (2) the party or parties liable for the costs associated with the abatement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 33, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 3, eff. September 1, 2009.

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by

Subsections (b), (f), (g), (h), and (k), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

- (1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;
- (2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;
- (3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;
- (4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or
- (5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

- (1) a cemetery heretofore established and operating;
- (2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;
- (3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:
  - (A) is owned by the society or sect; and
  - (B) is part of the campus on which an existing principal church building is located;
- (4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;
- (5) the establishment and use of a mausoleum that is:
  - (A) constructed beneath the principal church building owned by an organized religious society or sect that:
    - (i) is exempt from income taxation under Section

501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect;

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least \$500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles; or

(7) the establishment and use of a private family cemetery by an organization that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that is:

(A) owned by the organization; and

(B) located in a county:

(i) with a population of more than 125,000; and

(ii) that is adjacent to a county that has a population of more than 1.5 million and in which more than 75 percent of the population lives in a single municipality.

(c) Subsection (a) does not apply to a private family cemetery established and operating on or before September 1, 2009.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be

located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g) Not later than December 1, 2003, a corporation may file a written application with the governing body of a municipality that has a population of at least 27,000 and not more than 30,000 and that is located in a county with a population of at least 245,000 and not more than 250,000 to establish or use a cemetery located outside the municipality but within two miles of the municipal boundaries. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1017  
(H.B. [2643](#)), Sec. 1

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 367  
(S.B. [131](#)), Sec. 1

(h) Not later than September 1, 2014, a person may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that:

- (1) is located in three or more counties;
- (2) has a population of 18,000 or more; and
- (3) does not have a cemetery within its boundaries, other than a family cemetery.

(i), (j) Deleted by Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993.

(k) This subsection applies only to a municipality with a population of 115,000 or more that is located in a county with a population of less than 132,000. Not later than September 1, 1994, a person may file a written application with the governing body of the municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 215, 216, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 77, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 736, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 1, eff. May 21, 2001; Acts 2001, 77th Leg., ch. 631, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 98, Sec. 1, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. [350](#)), Sec. 2, eff. September

1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1026 (H.B. 1614), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 373 (H.B. 1404), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 487 (S.B. 662), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 367 (S.B. 131), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 721 (H.B. 788), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 49, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.007, eff. September 1, 2013.

Sec. 711.009. AUTHORITY OF CEMETERY KEEPER. (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.008, eff. September 1, 2013.

Sec. 711.010. UNKNOWN OR ABANDONED CEMETERY. (a) The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would further disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a district court as provided by this section.

(b) On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains on the property have not previously been removed, the court shall order the removal of the human remains from the cemetery to a perpetual care cemetery.

(c) In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 251 (H.B. 1011), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 5, eff. September 1, 2009.



Sec. 711.0105. METHOD OF REMOVAL OF REMAINS. (a) The removal of remains authorized under this chapter shall be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) The person removing the remains shall make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Remains that have been moved must be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 6, eff. September 1, 2009.

Sec. 711.011. FILING RECORD OF UNKNOWN CEMETERY. (a) A person who discovers an unknown or abandoned cemetery shall file notice of the cemetery with the county clerk of the county in which the cemetery is located not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(b) A county clerk may not charge a fee for filing notice under this section.

(c) The county clerk shall send a copy of the notice to the Texas Historical Commission and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 7, eff. September 1, 2009.

Sec. 711.012. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer Subchapter C-1 and Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052,

711.061, 711.063, and 711.064 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.0105, 711.021-711.034, 711.038, 711.0395, 711.041, 711.042, 711.052, 711.061, 711.063, and 711.064 relating to cemeteries that are not perpetual care cemeteries.

(c) The Texas Historical Commission may adopt rules to:

(1) enforce and administer Sections 711.010 and 711.011;  
and

(2) enforce and administer Sections 711.004, 711.007, 711.0105, 711.035, and 711.036 relating to cemeteries that are not perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 34, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 8, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 2, eff. September 1, 2013.

#### **SUBCHAPTER B. CEMETERY CORPORATIONS**

Sec. 711.021. FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY. (a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code.

(b-1) The formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023.

(c) The charter of a cemetery corporation formed after May 15, 1947, but before September 1, 1993, must state whether the

corporation:

- (1) is operated for profit or not for profit; and
- (2) is operating a perpetual care cemetery or a nonperpetual care cemetery.

(d) A corporation formed before September 3, 1945, under statutory authority other than Section 5, Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a-5, Vernon's Texas Civil Statutes), to maintain and operate a cemetery is governed by this chapter only to the extent that this chapter does not conflict with the charter or articles of incorporation of the corporation.

(e) This section does not apply to a corporation chartered by the state before September 3, 1945, that, under its charter, bylaws, or dedication, created a perpetual care trust fund and maintains that fund in accordance with the corporation's trust agreement, Chapter 712, and this chapter. The corporation may operate a perpetual care cemetery without amending the corporation's charter as if it had been incorporated under this section.

(f) Any cemetery that begins its initial operations on or after September 1, 1993, shall be operated as a perpetual care cemetery in accordance with Chapter 712.

(g) This section does not apply to:

- (1) a family, fraternal, or community cemetery that is not larger than 10 acres;
- (2) an unincorporated association of plot owners not operated for profit;
- (3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
- (4) a public cemetery belonging to this state or a county or municipality.

(h) A cemetery corporation, including a corporation described by Subsection (d), that does not operate as a perpetual care cemetery in accordance with Chapter 712 may not use the words "perpetual care" or "endowment care," or any other term that suggests "perpetual care" or "endowment care" standards, in:

- (1) the cemetery's name; or
- (2) any advertising relating to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 9, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 405, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 3, eff. September 1, 2013.

Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS. (a) Plot owners may organize a nonprofit corporation to receive title to land previously dedicated to cemetery purposes.

(b) The plot owners must:

(1) publish notice of the time and place of the organizational meeting in a newspaper in the county, if there is a newspaper, for 30 days before the date of the meeting; and

(2) post written notice at the cemetery of the time and place of the meeting for 30 days before the date of the meeting.

(c) A majority of the plot owners present and voting at the meeting shall decide whether to incorporate and to convey the land to the corporation.

(d) If the plot owners vote to incorporate, at the same meeting they shall select from the plot owners a board of directors to be named in the charter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NONPROFIT CEMETERY CORPORATION. (a) A person who purchases a plot from a nonprofit cemetery corporation is a shareholder of the corporation. The person may vote in the election of corporate officers and on other matters to the same extent as a stockholder in another corporation.

(b) An owner of a plot in a cemetery operated by a nonprofit corporation is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, whether the owner acquired title to the plot from the corporation or before the corporation was organized.

(c) This section does not apply to a nonprofit cemetery corporation formed before September 1, 1963, if:

(1) the corporation was formed under Subdivision 87,

Article 1302, Revised Statutes; and

(2) the charter or the articles of incorporation of the corporation provide that the corporation has no capital stock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 2003.

Sec. 711.024. AUTHORITY OF NONPROFIT CEMETERY CORPORATION. A nonprofit cemetery corporation organized by plot owners may divide cemetery property into lots and subdivisions for cemetery purposes and charge assessments on the property for the purposes of general improvement and maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. CEMETERY ORGANIZATIONS**

Sec. 711.031. RULES; CIVIL PENALTY. (a) A cemetery organization may adopt and enforce rules:

(1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the cemetery organization;

(2) to restrict the use of cemetery property;

(3) to regulate the placement, uniformity, class, and kind of markers, monuments, effigies, and other structures in any part of the cemetery;

(4) to regulate the planting and care of plants in the cemetery;

(5) to prevent the interment of remains not entitled to be interred in the cemetery;

(6) to prevent the use of a plot for a purpose that violates the cemetery organization's restrictions;

(7) to regulate the conduct of persons on cemetery property and to prevent improper meetings at the cemetery; and

(8) for other purposes the directors consider necessary for the proper conduct of the cemetery organization's business, and for the protection of the premises and the principles, plans, and ideals on which the cemetery was organized.

(b) Rules adopted under this section must be plainly printed or typed and maintained for inspection in the cemetery organization's

office or another place in the cemetery prescribed by the directors.

(c) The directors may prescribe a penalty for the violation of a rule adopted under this section. The cemetery organization may recover the amount of the penalty in a civil action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 11, eff. Sept. 1, 1993.

Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED. (a) A cemetery organization may not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent.

(b) A provision of a contract entered into by a cemetery organization or of a certificate of ownership or other instrument of conveyance issued by a cemetery organization that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 13, eff. Sept. 1, 1993.

Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ORGANIZATION; RECORDING TITLE. (a) A cemetery organization may acquire by purchase, donation, or devise property consisting of land, a mausoleum, a crematory and columbarium, or other property in which remains may be interred under law.

(b) A cemetery organization operating a cemetery located and operated in accordance with the distance requirements prescribed in Section 711.008 may acquire land adjacent to the cemetery for cemetery purposes. In this subsection, "adjacent" means that some part of the property to be acquired has a common boundary with the existing cemetery, or a common boundary with a public easement, a utility easement, or a railroad right-of-way, some part of which has a common boundary with the cemetery. In no event shall the closest points of the property to be acquired and the cemetery be more than 200 feet apart.

(c) A cemetery organization that acquires property may record title to its property with the county clerk of the county in which the property is located if its president and secretary or other

authorized officer acknowledge a declaration executed by the cemetery organization that describes the property and declares the cemetery organization's intention to use the property or a part of the property for interment purposes.

(d) Filing under Subsection (b) is constructive notice as of the date of the filing of the use of the property for interment.

(e) A cemetery organization may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 2, eff. May 21, 2001.

Sec. 711.034. DEDICATION. (a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers and showing a specific unique number for each crypt, lawn crypt, or niche.

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or officers of the cemetery organization;

(2) signed by the president or vice-president and the secretary of the cemetery organization, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under

this section dedicates the property for cemetery purposes and is constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. Except as provided by Subsection (e-1), if a change is made, the cemetery organization shall:

(1) file an amended map or plat not later than the last day of the next calendar quarter; and

(2) indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle that contains not more than four niches on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in the county deed records.

(g) A cemetery association is civilly liable to the state in an amount not to exceed \$1,000 for each map or plat that fails to comply with Subsection (a), (b), (c), or (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 502, Sec. 1, eff. Oct. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 4, eff. September 1, 2013.

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in



fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

(1) the directors of the cemetery organization that owns or operates the cemetery; or

(2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

(1) is exempt from public improvements assessments, fees, and public taxation; and

(2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007.

(g) Property is considered to be dedicated cemetery property if:

(1) one or more human burials are present on the property; or

(2) a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 16, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 9, eff. September 1, 2009.

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

(1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or

(2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 17, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 10, eff. September 1, 2009.

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery organization by contract may incur indebtedness as required to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 18, eff. Sept. 1, 1993.

Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS. (a) A cemetery organization may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section 711.034;

(2) subject to the rules of the cemetery organization and the restrictions in the certificate of ownership or other instrument of conveyance; and

(3) after payment in full of the purchase price of the plot.

(b) A certificate of ownership or other instrument evidencing the conveyance of the exclusive right of sepulture by a cemetery organization must be signed by the president or vice-president and the secretary or other officers authorized by the cemetery organization.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the cemetery organization's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership or other instrument may not be divided without the consent of the cemetery organization.

(e) A person who is an officer, agent, or employee of the cemetery organization or its affiliate and who is exempt from registration under Subchapter C-1 is not required to be licensed or registered to sell a plot in a dedicated cemetery.

(f) A cemetery organization may not resell the exclusive right

of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that violates this subsection unless:

(1) the state agency authorized to enforce this section provides the cemetery organization written notice of the violation; and

(2) the cemetery organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 19, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 4, eff. September 1, 2013.

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS. (a) A person may not act as a cemetery broker in the sale or resale of the exclusive right of sepulture in a plot unless the person is registered as a cemetery broker under Subchapter C-1 or is exempt from registration under Subchapter C-1.

(b) Resale of the exclusive right of sepulture in a plot is subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. A quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be:

(1) in a form authorized by or otherwise acceptable to the cemetery organization, subject to Subsection (c);

(2) signed by:

(A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or 711.039(g)(2), as the seller or transferor;

(B) the designated purchaser or transferee; and  
(C) each cemetery broker or other agent assisting in the transfer of the interment rights; and

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

(c) On request of a person acting as a cemetery broker, a cemetery organization shall provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.

(d) The resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively may not be divided without the consent of the cemetery organization.

(e) A person acting as a cemetery broker that sells or resells the right of sepulture in a plot shall collect and remit to the cemetery organization:

(1) all fees required by law; and

(2) any other fee required by the rules of the cemetery organization, subject to Subsection (f).

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

(g) A person acting as a cemetery broker must keep a record of each sale or resale under this section. The record must include:

(1) the name and address of the purchaser;

(2) the date of the purchase;

(3) a copy of the purchase agreement, with the name and address of the cemetery;

(4) a specific description of the interment rights;

(5) the purchase price;

(6) the amount of fees collected and remitted in accordance with Subsection (e); and

(7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 5, eff. January 1, 2014.

Sec. 711.039. RIGHTS OF INTERMENT IN PLOT. (a) A plot in

which the exclusive right of sepulture is conveyed is presumed to be the separate property of the person named as grantee in the certificate of ownership or other instrument of conveyance.

(b) The spouse of a person to whom the exclusive right of sepulture in a plot is conveyed has a vested right of interment of the spouse's remains in the plot while the spouse is married to the plot owner or if the spouse is married to the plot owner at the time of the owner's death.

(c) An attempted conveyance or other action without the joinder or written, attached consent of the spouse of the plot owner does not divest the spouse of the vested right of interment.

(d) The vested right of interment is terminated:

(1) on the final decree of divorce between the plot owner and the owner's former spouse unless the decree provides otherwise; or

(2) when the remains of the person having the vested right are interred elsewhere.

(e) Unless a plot owner who has the exclusive right of sepulture in a plot and who is interred in that plot has made a specific disposition of the plot by express reference to the plot in the owner's will or by written declaration filed and recorded in the office of the cemetery organization:

(1) a grave, niche, or crypt in the plot shall be reserved for the surviving spouse of the plot owner; and

(2) the owner's children, in order of need, may be interred in any remaining graves, niches, or crypts of the plot without the consent of a person claiming an interest in the plot.

(f) The surviving spouse or a child of an interred plot owner may each waive his right of interment in the plot in favor of a relative of the owner or relative of the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.

(g) The exclusive right of sepulture in an unused grave, niche, or crypt of a plot in which the plot owner has been interred may be conveyed only by:

(1) specific disposition of the unused grave, niche, or crypt by express reference to it in a will or by written declaration of the plot owner filed and recorded in the office of the cemetery organization; or

(2) the surviving spouse, if any, and the heirs-at-law of the owner.

(h) Unless a deceased plot owner who has the exclusive right of sepulture in a plot and who is not interred in the plot has otherwise made specific disposition of the plot, the exclusive right of sepulture in the plot, except the one grave, niche, or crypt reserved for the surviving spouse, if any, vests on the death of the owner in the owner's heirs-at-law and may be conveyed by them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 20, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 502, Sec. 1, eff. Sept. 1, 2001.

Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A cemetery organization may not make more than one interment in a plot unless each owner of the plot consents to the interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 6, eff. September 1, 2009.

Sec. 711.040. MULTIPLE OWNERS OF PLOT. Two or more owners of a plot may designate a person to represent the plot and file with the cemetery organization written notice of the designation. If notice is not filed, the cemetery organization may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 21, eff. Sept. 1, 1993.

Sec. 711.041. ACCESS TO CEMETERY. (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during the hours determined by the owner or owners of the lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) The owner or owners of the lands surrounding the cemetery

or private burial grounds may designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) At a time other than the time provided by Subsection (b), the owner or owners of the lands surrounding a cemetery or private burial grounds must allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if:

(1) the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit;

(2) the person provides the notice required by Subdivision (1) not later than the 14th day before the date the person wishes to visit the cemetery; and

(3) the time of the visit is reasonable.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 22, eff. Sept. 1, 1993.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 7, eff. September 1, 2009.

Sec. 711.042. AUTHORITY OF NONPROFIT CEMETERY ORGANIZATION. A nonprofit cemetery organization organized by plot owners may:

(1) divide cemetery property into lots and subdivisions for cemetery purposes;

(2) charge assessments on the property for the purposes of general improvement and maintenance; and

(3) take any action, to the same extent and for the same purposes as a for-profit cemetery corporation, that is necessary to carry out the organization's business purposes, which include the business purposes necessarily incident to the burial and disposal of human remains, including any action necessary to:

(A) convey property or other assets of the organization;

(B) borrow money;

(C) pledge or mortgage the property or other assets of the organization to secure the organization's indebtedness or other obligations;

(D) lend money and take security for the loan in furtherance of its business purposes; and



(E) conduct any business activity or business directly or by or through one or more subsidiaries.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 2, eff. June 18, 1999.

#### **SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION**

Sec. 711.045. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the banking commissioner of Texas.
- (3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.046. CEMETERY BROKER REGISTRATION. (a) To register under this subchapter, a cemetery broker shall file with the department a sworn, notarized statement that contains:

- (1) the name and street address of the cemetery broker;
- (2) the name, street address, and telephone number of the representative of the cemetery broker to be contacted regarding a written complaint; and
- (3) any Internet or other electronic mail address of the cemetery broker.

(b) The registration of a cemetery broker is valid until withdrawn or revoked. Periodic renewal of the registration is not required.

(c) A registered cemetery broker shall update the information contained in the registration statement not later than the 60th day after the date the information changes.

(d) The department may charge a cemetery broker a reasonable fee to cover the costs of filing and maintaining the registration statement and administering this chapter. The administration fee may not exceed \$100 per year.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.047. EXEMPTIONS. This subchapter does not apply to a

person offering to sell or selling the exclusive right of sepulture in a plot if the person is:

- (1) an officer, agent, employee, or affiliate of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization;
- (2) an employee of a registered cemetery broker;
- (3) with respect to the specific plot for sale:
  - (A) a grantee named in the certificate of ownership or other instrument of conveyance for the plot as filed and recorded in the cemetery organization's office under Section 711.038;
  - (B) a spouse or other heir of the named grantee as described by Section 711.039;
  - (C) an executor, administrator, or guardian of the named grantee appointed by court order; or
  - (D) an attorney-in-fact for the named grantee under a durable power of attorney if the person is not otherwise engaged in the business of a cemetery broker and does not solicit appointment as attorney-in-fact for the purpose of offering to sell or selling the exclusive right of sepulture of the named grantee; or
- (4) otherwise exempt in accordance with rules adopted by the commission as necessary to protect the public health and safety.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.048. COMPLAINTS. (a) A cemetery broker is subject to rules adopted under Section 11.307, Finance Code, regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department. The rules must be consistent with the obligations imposed by this section.

(b) If the department receives a signed written complaint from a person concerning a cemetery broker, the department shall provide written notification of the complaint to the cemetery broker's designated representative not later than the 31st day after the date the complaint was received and provide a copy of the complaint to the representative. The department may:

- (1) require the cemetery broker to resolve the complaint or to provide the department with a response to the complaint; or
- (2) provide written direction requiring the cemetery broker

to take specific action to resolve the complaint.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.049. TERMINATION OF REGISTRATION. (a) A cemetery broker may withdraw the cemetery broker's registration at any time.

(b) After notice and opportunity for a hearing, the commissioner may revoke the registration of a registered cemetery broker that:

(1) fails to pay the annual administration fee and fails to cure the default not later than the 30th day after the date written notice of the default is mailed by the department to the cemetery broker;

(2) fails or refuses to comply with the department's written request for a response to a complaint; or

(3) the commissioner concludes, after considering a complaint filed under this subchapter, has engaged in an intentional course of conduct that:

(A) violates federal or state law; or

(B) constitutes improper, fraudulent, or dishonest dealings.

(c) The commissioner shall state the basis of the decision in an order revoking the registration of a cemetery broker. The cemetery broker may appeal an order revoking registration in the manner provided by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

#### **SUBCHAPTER D. ENFORCEMENT**

Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE. (a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 30th day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney

general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 30th day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the violation occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 5, eff. September 1, 2013.

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTIVE RELIEF. In addition to bringing an action under Section 711.051, the attorney general at the request of the Texas Funeral Service Commission may bring an action for injunctive relief to enforce this chapter or a rule or order adopted by the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 8, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 11, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.008, eff. September 1, 2011.

Sec. 711.052. CRIMINAL PENALTIES.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 6

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as

required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section 711.0395; or

(6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 220  
(H.B. 52), Sec. 7

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) offers or receives monetary inducement to solicit business for a cemetery broker;

(6) fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section 711.0381; or

(7) fails or refuses to register as a cemetery broker as

required by Subchapter C-1.

(b) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee offers any inducement, pecuniary or otherwise, to any person or entity for the purpose of securing or attempting to secure business for that cemetery organization. This subsection does not prohibit the offering or payment by a cemetery organization of any such inducement, pecuniary or otherwise, to an officer, employee, agent, subcontractor, or representative of the cemetery organization.

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) Except as provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under Subsection (a)(5) or (6) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 217, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 23, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 7, eff. September 1, 2013.

Sec. 711.0521. ACCESS TO CEMETERIES; CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 9, eff. September 1, 2009.

Sec. 711.053. DEFINITION. In this subchapter, "commissioner" means the banking commissioner of Texas.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS. The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

(2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within

30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew:

(1) the person's registration under Subchapter C-1, if the person is registered under that subchapter; or

(2) the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 8, eff. September 1, 2013.

Sec. 711.057. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot.

(b) An emergency order remains in effect unless stayed by the



commissioner.

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.058. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

(1) failed to remit a fee in accordance with Section 711.0381; or

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:

(1) failed to remit a fee in accordance with Section 711.0381;

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance;

(3) refused to submit to examination by the department;

(4) was the subject of an order to cancel, suspend, or

refuse a registration under Subchapter C-1; or

(5) is required to register under Subchapter C-1 and is not registered or has transferred the ownership of the business that required registration to another person who is not registered.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(d) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(e) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive. The commissioner may seek an additional remedy authorized under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

**SUBCHAPTER E. LAWN CRYPTS**

Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn crypt may not be installed unless:

- (1) the lawn crypt is constructed of concrete and reinforced steel or other comparably durable material;
- (2) the lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material;
- (3) the lawn crypt provides a method to drain water out of the lawn crypt;
- (4) the outside top surface of the lawn crypt at the time of installation is at least 1-1/2 feet below the surface of the ground as required by Section 714.001(a)(2) and is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery;
- (5) the lawn crypt is installed in a garden or other section of the cemetery that has been dedicated for lawn crypt interment purposes in accordance with Section 711.034; and
- (6) the lawn crypt is installed in multiple units of 10 or more or as prescribed by Subsection (b).

(b) A lawn crypt that is part of a private estate may be installed in fewer than 10 units. For purposes of this subsection, a private estate is a small section of a cemetery that has the following characteristics:

- (1) is sold under a single contract;
- (2) is usually offset from other burial sites;
- (3) allows for interment of several members of the same family or their designees; and
- (4) is identified on the plat for cemetery property as a private estate in accordance with Section 711.034.

Added by Acts 1997, 75th Leg., ch. 1389, Sec. 4, eff. Sept. 1, 1997.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 3, eff. September 1, 2011.

Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in which undeveloped lawn crypt spaces are being sold or reserved for sale shall begin construction on the lawn crypt section not later than 48 months after the date of the first sale or reservation, whichever is earlier, and must complete construction not later than 60 months after the date of the first sale or reservation, whichever is earlier.

(b) If construction of a lawn crypt section described by Subsection (a) does not begin or has not been completed by the dates specified in Subsection (a), on the buyer's written request, the cemetery shall refund the entire amount paid for the undeveloped lawn crypt space not later than the 30th day after the date of the buyer's request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped lawn crypt space must contain terms, whether in English or Spanish, that inform the buyer:

(1) that the buyer may, after providing written notice, cancel the contract for failure by the cemetery or contractor to construct the lawn crypt space within the time limits specified by Section 711.063(a) and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space as described by Section 711.063(b); and

(2) of the options available under a fully paid contract if the person to be interred in the undeveloped lawn crypt space dies before completion of the related lawn crypt section, including the option to:

(A) select a replacement lawn crypt space or other interment acceptable to the buyer or the buyer's representative;

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped lawn crypt space is completed, at which time the cemetery shall disinter and reinter the human remains or cremated remains at no additional charge to the buyer; or

(C) cancel the contract on written notice of the buyer or the buyer's representative and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space if:

(i) the cemetery does not offer a temporary interment option; or

(ii) the buyer or the buyer's representative does not accept a replacement lawn crypt or other interment.

(b) A sales contract for undeveloped lawn crypt space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Each notice required by this section must be written in plain language designed to be easily understood by the average consumer and must be printed in an easily readable font and type size.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

**SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT  
RELATING TO CEMETERY BROKERS**

Sec. 711.081. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the banking commissioner of Texas.
- (3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.082. ADMINISTRATION; FEES. (a) The department shall administer Subchapters C and C-1 relating to cemetery brokers.

(b) The commission may adopt reasonable rules concerning:

- (1) fees to defray the cost of administering Subchapters C and C-1;
- (2) the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;

(3) changes in the management or control of a cemetery broker's business; and

(4) any other matter relating to the enforcement and administration of Subchapters C and C-1.

(c) A fee set by the commission may not produce unnecessary fund balances.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as a cemetery broker shall maintain records in accordance with this subchapter and Section 711.0381.

(b) The department shall examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to:

(1) safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot; and

(2) efficiently enforce applicable law.

(c) A person may maintain and provide a record required to be maintained under this section in an electronic format if the record is reliable and can be retrieved in a timely manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.084. EXAMINATION FEE. (a) For each examination conducted under Section 711.083, the commissioner or the commissioner's agent shall impose on the cemetery broker a fee in an amount set by the commission under Section 711.082.

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

## CHAPTER 712. PERPETUAL CARE CEMETERIES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Corporation" means a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code, or an entity that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 24, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 1, eff. September

1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 5, eff. September 1, 2011.

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 25, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 36, eff. Sept. 1, 2003.

Sec. 712.003. REGISTRATION REQUIRED; MINIMUM CAPITAL. (a) A perpetual care cemetery may not be operated in this state unless a certificate of formation for a domestic filing entity or registration to transact business for a foreign filing entity is filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests;

(2) the location of its perpetual care cemetery; and

(3) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) \$15,000, if the cemetery serves a municipality with a population of less than 15,000;



(2) \$30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) \$50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of \$75,000; and

(2) a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 218, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 26, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 7, eff. September 1, 2013.

Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A corporation must hold a certificate of authority issued under this chapter to operate a perpetual care cemetery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES. (a) To obtain a certificate of authority to operate a perpetual care cemetery, an applicant must, not later than the 30th day after the date a corporation files its certificate of formation or application for registration with the secretary of state:

(1) file an application, made under oath, on a form prescribed by the department; and

(2) pay a filing fee in an amount set by the Finance Commission of Texas under Section 712.008.

(b) If the corporation fails to comply with Subsection (a), the commissioner may instruct the secretary of state to remove the corporation from the secretary's active records or cancel the corporation's registration. On an instruction from the commissioner under this subsection, the secretary of state shall remove the corporation from the secretary's active records or cancel the corporation's registration and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(c) A fee or cost paid under this chapter in connection with an application or renewal is not refundable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY; INVESTIGATION. (a) The commissioner may investigate an applicant before issuing a certificate of authority.

(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

(1) the applicant's business ability, experience,

character, financial condition, and general fitness warrant the public's confidence;

(2) the cemetery operations manager has at least two years of experience in cemetery management;

(3) the issuance of the certificate of authority is in the public interest;

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(5) the applicant corporation:

(A) is in good standing and statutory compliance with this state;

(B) is authorized to engage in the perpetual care cemetery business in this state; and

(C) does not owe any delinquent franchise or other taxes to this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall issue a certificate of authority if the commissioner finds that:

(1) the applicant meets the qualifications listed in Section 712.0034 and it is reasonable to believe that the applicant's cemetery business will be conducted fairly and lawfully, according to applicable state and federal law, and in a manner commanding the public's trust and confidence;

(2) the issuance of the certificate of authority is in the public interest;

(3) the documentation and forms required to be submitted by the applicant are acceptable; and

(4) the applicant has satisfied all requirements for issuance of a certificate of authority.

(b) The applicant is entitled, on request, to a hearing on a

denial of the application. The request must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing must be held not later than the 60th day after the date of the request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. The hearing is a contested case under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. An initial certificate of authority expires March 1 of the year after the year the certificate is issued. The certificate must be renewed at that time and by March 1 of each following year.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) As a condition of renewal, a certificate holder must meet the qualifications and satisfy the requirements that apply to an applicant for a new certificate of authority. Additionally, not later than the certificate's annual renewal date, a certificate holder shall:

(1) pay an annual renewal fee in an amount established by Finance Commission of Texas rule; and

(2) submit a renewal report under oath and in the form and medium required by the commissioner that demonstrates that the certificate holder meets the qualifications and requirements for holding a certificate.

(b) If the department does not receive a certificate holder's renewal fee and complete renewal report on or before the certificate's renewal date, the commissioner:

(1) shall notify the certificate holder in writing that the

certificate holder must submit the renewal report and pay the renewal fee not later than the 30th day after the certificate's renewal date; and

(2) may require the certificate holder to pay a late fee, in an amount established by Finance Commission of Texas rule and not subject to appeal, for each business day after the certificate's renewal date that the commissioner does not receive the completed renewal report and renewal fee.

(c) On timely receipt of a certificate holder's complete renewal report and renewal fee and any late fee, the department shall review the report and the commissioner may:

(1) renew the certificate of authority; or

(2) refuse to renew the certificate of authority and take other action the commissioner considers appropriate.

(d) The applicant on request is entitled to a hearing to contest the commissioner's refusal to renew the certificate. The request must be filed with the commissioner not later than the 30th day after the date the notice of refusal to renew is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(e) The holder or principal of or the person in control of the holder of an expired certificate of authority, or the holder or principal of or person in control of the holder of a certificate of authority surrendered under Section 712.00395, who wishes to conduct activities for which a certificate of authority is required under this chapter shall file a new application for a certificate of authority and satisfy all requirements for the certificate that apply at the time the new application is filed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A certificate of authority issued under this chapter may not be transferred or assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8,

eff. September 1, 2011.

Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF CONTROL. (a) A certificate holder shall notify the department in writing of a transfer of ownership of the certificate holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the corporation as follows:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; and

(2) in the case of an involuntary transfer, not later than one business day after receiving notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation and is not a certificate holder, the proposed transferee shall file any necessary documents with the secretary of state and an application for a certificate of authority with the department as required by this chapter. If the proposed transferee is required to apply for a certificate of authority under this subsection, the transfer of the perpetual care fund may not occur until after the date a certificate of authority is issued to the transferee applicant.

(c) If the commissioner denies the application, a hearing may be requested and conducted according to the procedures in Section 712.0035(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 8, eff. September 1, 2013.

Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE.

(a) A certificate holder may apply to the commissioner for permission to surrender the certificate of authority if the holder:

(1) is a cemetery that qualified for an exemption under

Section 711.021(g), but voluntarily elected to become a perpetual care cemetery;

(2) has performed not more than 10 burials per year during each of the last five years;

(3) is not larger than 10 acres; and

(4) has a perpetual care fund that is less than \$30,000.

(b) The application for permission to surrender a certificate of authority must be sworn to and be on a form prescribed by the department.

(c) The certificate holder shall publish a notice of intention to surrender a certificate of authority to operate a perpetual care cemetery one time in a newspaper of general circulation in each county in which the cemetery is located. The notice must:

(1) be in the form and include the information required by the banking commissioner;

(2) state that:

(A) the certificate holder is applying to surrender the holder's certificate of authority to operate a perpetual care cemetery;

(B) a cemetery plot owner or cemetery plot owner's heir may request a hearing to contest the surrender; and

(C) a request for a hearing must be filed with the department not later than the 14th day after the date the notice is published.

(d) The certificate holder shall submit, not later than the seventh day after the date the notice is published, a publisher's affidavit evidencing publication of the notice.

(e) If a request for hearing is timely filed by a plot owner or plot owner's heir, the commissioner shall hold a hearing in accordance with Chapter 2001, Government Code.

(f) If a request for a hearing is not timely filed by a plot owner or plot owner's heir, the commissioner may approve or deny the application.

(g) If an application is denied, and if a hearing is not held before the denial, the applicant may request a hearing to appeal the denial of the application. The applicant's request for a hearing must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(h) An order approving the surrender of a certificate of

authority must impose four conditions that are not subject to objection. Failure to satisfy any of these conditions constitutes a violation of the commissioner's order, and the certificate holder is subject to an enforcement action under this chapter. The order approving the surrender must:

(1) require the perpetual care fund to remain in an irrevocable trust, with the income to be used for perpetual care of the cemetery in general and for those plots that were purchased before the certificate was surrendered;

(2) require that the cemetery remove any signage or other announcement stating that the cemetery is a perpetual care cemetery;

(3) require each contract and other evidence of ownership entered into after the date of the order to clearly state that the cemetery is not regulated by the Texas Department of Banking and may not use the term "perpetual care cemetery"; and

(4) state the location of cemetery records and require the cemetery to:

(A) retain existing records regarding the perpetual care fund for five years after the date of the order; and

(B) continue to comply with all recordkeeping requirements of Chapter 711.

(i) Not later than the 10th day after the date an order approving the surrender of a certificate of authority is signed, the certificate holder shall deliver the original certificate of authority to the commissioner along with a written notice of surrender that includes the location of the certificate holder's records and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to the records.

(j) The surrender of a certificate of authority does not reduce or eliminate a certificate holder's administrative, civil, or criminal liability arising from any acts or omissions that occur before the surrender of the certificate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 8, eff. September 1, 2011.



Sec. 712.004. PERPETUAL CARE TRUST FUND REQUIRED. (a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:

(1) \$15,000, if the corporation has capital stock of \$15,000;

(2) \$30,000, if the corporation has capital stock of \$30,000; or

(3) \$50,000, if the corporation has capital stock of \$50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than \$50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 28, eff. Sept. 1, 1993.

Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF PERPETUAL CARE CEMETERY. (a) If a corporation chartered under Section 712.003 does not begin actual operation of its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

(1) the application of the directors;

(2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed \$500;

(3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery not later than one month after the date of the agreement; and

(4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 29, eff. Sept. 1, 1993.

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

- (1) "Perpetual Care Cemetery," or "Endowment Care Cemetery";
- (2) the names and telephone numbers of two of the corporation's officers or directors; and
- (3) the name of each bank or trust company entrusted with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery, including the roads on cemetery property."

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 30, eff. March 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 341 (H.B. [1031](#)), Sec. 1, eff. September 1, 2009.

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 13, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 37, eff. Sept. 1, 2003.

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person

having the right to control the disposition of the victim's remains under Section 711.002(a) for:

- (1) any actual damages incurred;
- (2) punitive damages not to exceed \$10,000; and
- (3) reasonable attorney's fees and court costs incurred in

an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 14, eff. Sept. 1, 2001.

#### **SUBCHAPTER B. PERPETUAL CARE TRUST FUND**

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) A corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(b) The principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the

principal of the fund separate from all operating funds of the corporation.

(c) In establishing a fund, the corporation may adopt plans for the general care, maintenance, and embellishment of its perpetual care cemetery.

(d) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(e) A corporation that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(f) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the corporation to persons interred and to be interred in its perpetual care cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the perpetual care cemetery from becoming a place of disorder, reproach, and desolation in the community in which the perpetual care cemetery is located.

(g) The trustors of two or more perpetual care trust funds may establish a common trust fund in which deposits required by this chapter are made, provided that separate records of principal and income are maintained for each perpetual care cemetery for the benefit of which the common trust fund is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 31, eff. Sept. 1, 1993.

Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A corporation authorized by law to operate a perpetual care cemetery but not doing so may do so if the corporation:

(1) complies with the requirements of this chapter for obtaining a certificate of authority; and

(2) establishes a fund as provided by Section 712.021 in an amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date

of the cemetery's first sale of plots; or

(B) the minimum amount provided by Section 712.004.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 32, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 9, eff. September 1, 2011.

Sec. 712.023. VALIDITY OF CONTRIBUTIONS. A contribution to a fund for perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument establishing the fund; or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 33, eff. Sept. 1, 1993.

Sec. 712.024. AMENDMENT OF TRUST INSTRUMENT. A corporation and the trustee of a fund may, by agreement, amend the instrument that established the fund to include any provision that is consistent with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 34, eff. Sept. 1, 1993.

Sec. 712.025. USE OF FUND INCOME. Fund income may be used only to provide the perpetual care described by the instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 35, eff. Sept. 1, 1993; Acts

2003, 78th Leg., ch. 562, Sec. 38, eff. Sept. 1, 2003.

Sec. 712.026. SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE.

(a) If the directors of a corporation do not generally care for and maintain the corporation's perpetual care cemetery, the district court of the county in which the perpetual care cemetery is located may:

(1) by injunction compel the directors to expend the net income of the corporation's fund as required by this chapter; or

(2) appoint a receiver to take charge of the fund and expend the net income of the fund as required by this chapter.

(b) The suit for relief under this section must be brought by at least five owners of plots located in the perpetual care cemetery.

(c) In a suit for relief under this section, court costs and attorney's fees shall be awarded:

(1) to the directors of the corporation, if it is found that the directors are substantially expending the available net income of the fund as required by this subchapter; or

(2) to the plot owners initiating the suit, if it is found that the directors are not substantially expending the available net income of the fund as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 36, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2001.

Sec. 712.027. INVESTMENT OF FUND. (a) A trustee shall invest and manage the investment of the principal of a fund in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 37, eff. Sept. 1, 1993.

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) \$1.75 a square foot of ground area conveyed as perpetual care property; or

(B) 15 percent of the total purchase price of that ground area;

(2) the greater of:

(A) \$105 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or \$60 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) \$35 for each niche interment right for columbarium interment conveyed; or

(B) 15 percent of the total purchase price of that niche interment right.

(b) Subsection (a) does not apply to deposits from sales required to be made by a corporation in its fund before September 1, 1993, under a corresponding statute in effect before that date.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 219, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 38, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 39, eff. Sept. 1, 2003.

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS. (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

(b) On the sale of a plot, a commission may not be paid to a



broker or salesman on the amount to be deposited in the fund.

(c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 220, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 39, eff. Sept. 1, 1993.

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT IN PERPETUAL CARE CEMETERY. A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the purpose of a corporation's perpetual care cemetery, including:

- (1) the improvement or embellishment of any part of the perpetual care cemetery;
- (2) the erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the perpetual care cemetery;
- (3) planting or cultivating plants in or around the perpetual care cemetery; or
- (4) taking special care of or embellishing a plot, section, or building in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 40, eff. Sept. 1, 1993.

#### **SUBCHAPTER C. REGULATION AND ENFORCEMENT**

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation shall file in its office and with the commissioner a statement for each perpetual care cemetery operated in this state in duplicate that shows:

- (1) the principal amount of its fund;
  - (2) the amount of the fund invested in bonds and other securities;
  - (3) the amount of cash on hand in the fund;
  - (4) any other item that shows the financial condition of the fund;
  - (5) the number of crypts, niches, and square feet of ground area conveyed under perpetual care before and after March 15, 1934, listed separately; and
  - (6) the number of crypts, niches, and square feet of ground area conveyed under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.
- (b) The corporation's president and secretary, or two principal officers, shall verify the information on the statement.
- (c) The corporation shall revise and post and file the statement on or before March 1 of each year.
- (d) A copy of the statement shall be available to the public upon request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 41, eff. Sept. 1, 1993.

Sec. 712.042. FEES. On filing a statement of funds under Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 221, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 42, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 15, eff. Sept. 1, 2001.

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund to make under oath a detailed report

of the condition of the fund. The report must include:

- (1) a detailed description of the assets of the fund;
  - (2) a description of securities held by the fund;
  - (3) if a security held by the fund is a lien, a description of the property against which the lien is taken;
  - (4) each security's acquisition cost;
  - (5) each security's market value at the time of acquisition;
  - (6) each security's current market value;
  - (7) each security's status with reference to default;
  - (8) a statement that a security is not encumbered by debt;
- and
- (9) any other information the commissioner determines is pertinent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 43, eff. Sept. 1, 1993.

Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine on a periodic basis as the commissioner reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce this chapter:

- (1) the books and records of a corporation relating to its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of that income;
- (2) the books and records of a corporation relating to sales of undeveloped mausoleum spaces and any preconstruction trust established by the corporation as provided by Section 712.063, including deposits to or withdrawals from the preconstruction trust, income of the preconstruction trust, and uses and expenditures of principal and income of the preconstruction trust; and
- (3) the consumer complaint files of a corporation relating to the fund, sales of undeveloped mausoleum spaces, a preconstruction trust, or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

- (b) A corporation that is examined under this section shall

make the specified books and records available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of Texas under Section 712.008 to defray:

- (1) the cost of examination;
- (2) the equitable or proportionate cost of maintenance and operation of the department; and
- (3) the cost of administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 44, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 699, Sec. 16, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 10, eff. September 1, 2011.

Sec. 712.0441. ENFORCEMENT. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is

subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(d) In addition to any penalty that may be imposed under Subsection (a), the commissioner may bring a civil action against a corporation to enjoin a violation described in Subsection (a) that has not been corrected within 30 days after the receipt by the corporation of written notice from the commissioner of the violation. Any such civil action may be brought in the district court of the county in which the corporation's perpetual care cemetery is operated.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1336, Sec. 15, eff. September 1, 2011.

(f) The commissioner may issue an order requiring restitution by a person to the cemetery's fund or to a preconstruction trust if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028 or in the preconstruction trust as required by Section 712.063.

(f-1) The commissioner may issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001(20-a), in compliance with the deadlines established by rules adopted under this chapter.

(g) If a violation described in Subsection (a) has not been corrected before the 31st day after the date the corporation receives written notice from the commissioner of the violation, the commissioner may report the violation to the attorney general, who shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the corporation's perpetual care cemetery is operated.

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may take action against the trustee as provided in Chapter 185, Finance Code.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 45, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 769, Sec. 3, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 62, Sec. 7.66, eff. Sept. 1, 1999; Acts  
2001, 77th Leg., ch. 699, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 3, eff. September  
1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 3, eff.  
September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 11, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 15, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 11, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 15, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 9, eff.  
September 1, 2013.

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 712.0441 be imposed on the person committing the violation or that the commissioner cancel or not renew the corporation's certificate of authority under this chapter if the person holds such a certificate.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 18, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 12, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 12, eff. September 1, 2011.

Sec. 712.0443. CEASE AND DESIST ORDER. (a) The commissioner may issue an order to cease and desist to a person if:

(1) the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to perpetual care cemeteries, including a violation of this chapter, the commissioner's final order, or a Finance Commission of Texas rule; and

(2) the violation was not corrected by the 31st day after the date the person receives written notice of the violation from the department.

(b) An order proposed under this section shall be served on the person and must state the grounds for the proposed order with reasonable certainty and the proposed effective date, which may not be less than the 20th day after the date the order is mailed or delivered. The order becomes effective on the proposed date unless the person requests a hearing not later than the 19th day after the date the order is mailed or delivered. If the person requests a hearing, the hearing shall be conducted in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by this chapter.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the emergency order may request in writing, not later than the 18th day after the date the order is

mailed, a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing not later than the 21st day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In conjunction with a proceeding to forfeit the right to do business in this state brought by the attorney general, the attorney general may seek the appointment of a receiver. This remedy is in addition to other grounds for the appointment of a receiver.

(b) If the receiver is a private party, the receiver shall be compensated from the corporation or, if the corporation has no assets available to pay the receiver, from the income only of the perpetual care fund. The receiver may not invade the principal of the fund.

(c) The court may appoint a department employee as receiver. If the receiver is a department employee, the employee may not receive compensation for serving as receiver in addition to the employee's regular salary. The department may receive reimbursement from the corporation for the travel expenses and the fully allocated personnel costs associated with the employee's service as receiver.

(d) A department employee serving as receiver is not personally liable for damages arising from the employee's official act or omission unless the act or omission is corrupt or malicious. The attorney general shall defend an action brought against an employee serving as receiver because of an official act or omission as receiver regardless of whether the employee has terminated service with the department before the action commences.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.



Sec. 712.048. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person sells, offers to sell, or advertises for sale an interment right in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this chapter, represents that the plot is under perpetual care. An offense under this subsection is a Class A misdemeanor. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages caused by an injury resulting from an offense under this subsection.

(b) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person knowingly defalcates or misappropriates assets of a fund. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code.

(c) A person commits an offense if the person collects money for the purchase of a memorial, as defined by Section 711.001, and knowingly defalcates or misappropriates the funds. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages, or the commissioner from maintaining an administrative action for restitution, caused by an injury resulting from an offense under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 46, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 14, eff. September 1, 2011.

#### **SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE**

## Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM SPACE.

(a) A corporation may not directly or indirectly sell or offer for sale an undeveloped mausoleum space unless before the sale or offer the corporation:

(1) establishes a preconstruction trust as provided by Section 712.063 or executes and submits a performance bond payable to the commissioner as provided by Section 712.067; and

(2) submits a written notice to the commissioner as required by Subsection (b).

(b) The written notice to the commissioner must set forth:

(1) the date the corporation anticipates that sales of undeveloped mausoleum spaces will begin;

(2) a copy of the sales contract proposed for use that complies with Section 712.066;

(3) if the corporation establishes a preconstruction trust as provided by Section 712.063, a copy of the executed preconstruction trust agreement that complies with this subchapter and identifies the preconstruction trustee;

(4) if the corporation submits a performance bond payable to the commissioner as provided by Section 712.067, the executed, original performance bond in the amount required by Section 712.067 and documentation supporting the corporation's computation of that amount; and

(5) other information the commissioner reasonably requires to properly administer and enforce this subchapter.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has established a preconstruction trust may substitute a performance bond that meets the requirements of Section 712.067. On acceptance of the performance bond by the commissioner, the corporation may terminate and withdraw all proceeds deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.062. DEPOSITS TO FUND. This subchapter does not

affect the corporation's obligation to make deposits to its fund as provided in Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as provided by Section 712.067, a corporation that intends to directly or indirectly sell or offer for sale undeveloped mausoleum spaces shall establish a preconstruction trust by written declaration and agreement appointing as preconstruction trustee a financial institution with trust powers that is located in this state.

(b) The corporation shall deposit in the preconstruction trust an amount equal to at least 40 percent of all proceeds received directly or indirectly from the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or deposits to the corporation's fund required by Section 712.029(c).

(c) On application, the commissioner may authorize a corporation to deposit less than the amount required by Subsection (b) if the corporation demonstrates to the reasonable satisfaction of the commissioner that:

(1) the sales projections of the corporation are prudent and based on reasonable assumptions;

(2) the projected cost of construction is objectively determined based on documentation similar to that required by Section 712.067(b); and

(3) the amount of money projected to be deposited in the preconstruction trust under the proposed lesser amount will equal or exceed 120 percent of the cost of constructing the mausoleum or mausoleum section.

(d) The corporation shall deposit the required amount into the preconstruction trust on or before the 30th day after the end of the month in which payment is received. At the time of making a deposit, the corporation shall furnish to the preconstruction trustee the name of each payor and the amount of payment on each account for which the deposit is being made. A contract between the corporation and an

agent or third party developer may not restrict or waive the corporation's primary liability for making the deposits required by this section.

(e) The preconstruction trustee may commingle deposits received if the accounting records accurately establish a separate account for each contract and reflect the amounts deposited and the income and loss allocable to each contract.

(f) Money in a preconstruction trust may be invested only in:

(1) demand deposits, savings accounts, certificates of deposit, or other accounts in financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code;

(2) marketable notes, bonds, evidences of indebtedness, or obligations with a term to maturity of five years or less and:

(A) issued by the United States or an instrumentality of the United States; or

(B) the principal and interest of which are guaranteed by the full faith and credit of the United States; and

(3) a mutual fund the portfolio of which consists wholly of investments permitted by Subdivisions (1) and (2).

(g) The preconstruction trustee may withdraw money from earnings on a preconstruction trust for the purpose of paying reasonable and necessary costs of operation of the preconstruction trust, including trustee or depository fees and expenses, and any special examination fees due to the department related to an examination of the preconstruction trust that is not incidental to examination of the corporation's fund. With the department's prior approval, the corporation may withdraw money from earnings on a preconstruction trust to pay any tax incurred because of the existence of the preconstruction trust.

(h) The preconstruction trust and the preconstruction trustee are governed by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation shall start construction of the mausoleum or mausoleum section in which sales or reservations for sale of undeveloped mausoleum spaces are being made on or before a date that is 48 months after the date of the first of those sales or reservations and shall complete construction on or before a date that is 60 months after the date of the first of those sales or reservations. The commissioner may grant extensions for good cause shown.

(b) If construction of a mausoleum or mausoleum section related to an undeveloped mausoleum space has not begun or been completely constructed by the applicable time specified by Subsection (a), on the written request of the buyer, the corporation and the preconstruction trustee shall, on or before the 30th day after the date of the buyer's request, refund the entire amount paid for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust. The corporation is liable to a buyer for any portion of the purchase price paid for undeveloped mausoleum spaces that was not deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION. (a) On completion of construction of a mausoleum or mausoleum section subject to this subchapter, the corporation may withdraw all money deposited in the preconstruction trust and the net income earned on the money after submitting to the preconstruction trustee a sworn affidavit of completion executed by an officer or agent of the corporation on a form prescribed by the department.

(b) During construction of the mausoleum or mausoleum section containing the undeveloped mausoleum spaces, the corporation may periodically withdraw from the preconstruction trust an amount equal to the previously unreimbursed cost of performed labor or delivered materials after submitting to the preconstruction trustee a sworn affidavit of expenditures for construction cost executed by an officer or agent of the corporation on a form prescribed by the

department.

(c) If the corporation delivers a completed mausoleum space acceptable to the buyer in lieu of the undeveloped mausoleum space purchased, the corporation may withdraw all money deposited to the preconstruction trust for that buyer and related income earned on the money after submitting to the preconstruction trustee a sworn affidavit of performance executed by an officer or agent of the corporation on a form prescribed by the department.

(d) The corporation shall maintain copies of the affidavits required by this section for examination by the department.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped mausoleum space, whether in English or Spanish, must inform the buyer:

(1) that the buyer by written notice may cancel the contract for the failure of the corporation or its agent or contractor to construct the mausoleum or mausoleum section containing the undeveloped mausoleum space within the time limits specified by Section 712.064(a) and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b);

(2) of the options available under a fully paid contract in the event that the person to be interred in the undeveloped mausoleum space dies before completion of the related mausoleum or mausoleum section, which may include an option to:

(A) select a replacement mausoleum space or other interment that is acceptable to the buyer or buyer's representative; or

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped mausoleum space is completed, at which time the corporation shall disinter and reinter the human remains or cremated remains at no

additional charge; and

(3) if the corporation does not offer a temporary interment option and the buyer does not accept a replacement mausoleum space or other interment, that the buyer or the buyer's representative by written notice may cancel the contract and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b).

(b) A corporation's sales contract for undeveloped mausoleum space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Required notices to buyers must be written in plain language designed to be easily understood by the average consumer and be printed in an easily readable font and type size.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST. (a) In lieu of establishing the preconstruction trust required by Section 712.063, a corporation may execute and submit a bond issued by a surety company authorized to do business in this state and reasonably acceptable to the commissioner. The bond must be payable to the commissioner and conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces.

(b) The amount of the bond must equal or exceed 120 percent of the cost of construction of the related mausoleum or mausoleum section. The cost of construction of the mausoleum or mausoleum section must be based on:

(1) estimates of the design architect and two or more bids for the construction from qualified contractors authorized to do business in this state;

(2) the actual cost of construction set forth in an executed contract with a qualified contractor authorized to do business in this state; or

(3) if the corporation intends to construct the mausoleum or mausoleum section itself, an amount equal to 120 percent of the estimated cost of construction, including direct and allocated labor and material costs.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has submitted a performance bond may establish a preconstruction trust that meets the requirements of Section 712.063. On acceptance of the substituted preconstruction trust by the commissioner, the corporation may terminate and withdraw the previously submitted performance bond.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.068. REPORTS. On or before the date the corporation's annual statement of funds is due as required by Section 712.041, the corporation shall cause the preconstruction trustee to file with the department, in the form prescribed by the department, a full and true statement regarding the activities of any preconstruction trust that was subject to this subchapter at any time during the preceding calendar year.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

## **CHAPTER 713. LOCAL REGULATION OF CEMETERIES**

### **SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES**

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

- (1) purchase, establish, and regulate a cemetery; and
- (2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended



by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

- (1) the depositor's name;
- (2) the amount and purpose of the deposit;
- (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and
- (4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or

burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

- (1) the name of the depositor, listed in alphabetical order;
- (2) the purpose and amount of the deposit;
- (3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;
- (4) the condition and status of the trust imposed; and
- (5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount

considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each \$100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

- (1) the occasion demands the appointment; or
- (2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. The governing body of a municipality in a county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. [1103](#)), Sec. 1, eff. May 23, 2009.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and

control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

- (1) remove or repair any fences, walls, or other improvements;
- (2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and
- (3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or

welfare. Additional burial spaces may not be offered for sale.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 12, eff. September 1, 2009.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 13, eff. September 1, 2009.

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;

- (2) leveling or straightening markers or memorials;
- (3) properly maintaining lawns, shrubbery, and other plants;
- (4) removing debris, including dead flowers and deteriorated plastic ornaments; and
- (5) promptly restoring gravesites following an interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 14, eff. September 1, 2009.

#### **SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES**

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

- (1) the amount and purpose of the gift; and
- (2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government

securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

- (1) has an interest in the grave or burial lot; or
- (2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 15, eff. September 1, 2009.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027 and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property

to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS. (a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS. (a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.



(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 853 (S.B. 951), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187 (H.B. 129), Sec. 2, eff. June 18, 2005.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES**

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY. (a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

(1) less than two feet below the surface of the ground if the container is not made of an impermeable material; or

(2) less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY. (a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.003. ABANDONED PLOTS IN PRIVATE CEMETERIES. (a) The ownership or right of sepulture in an unoccupied plot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization reverts to the cemetery on a finding by a court that the plot is abandoned. A cemetery may convey title to any plot that has reverted to the cemetery.

(b) A plot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

(1) maintain the plot in a condition consistent with other plots in the cemetery; or

(2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

(1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the plot; and

(2) paying the cemetery for any past due maintenance charges on the plot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a plot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim of the plot to the owner or, if the owner is deceased or his address is unknown, to the owner's known successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition and sale of an abandoned plot, including restoration, expenses of the sale, court costs and legal fees, a cemetery shall deposit the balance of the funds from the sale of the plot into an account to be used for the care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization described by Section 501(c)(13), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(13)).

(3) "Plot" means a grave space in a cemetery that has not

been used to inter human remains.

(4) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state, but is owned and operated by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1124, Sec. 1, 2, eff. June 18, 1999.

Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000. (a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **CHAPTER 715. CERTAIN HISTORIC CEMETERIES**

Sec. 715.001. DEFINITIONS. In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.002. PETITION OF NONPROFIT CORPORATION. A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

- (1) the record owners of the real property comprising the historic cemetery;
- (2) the owners of plots in the cemetery, who may be designated as a class in the petition;
- (3) the Texas Historical Commission; and
- (4) the Texas Funeral Service Commission.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.  
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 40, eff. Sept. 1, 2003.

Sec. 715.004. CONTENTS OF PETITION. (a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

- (1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;
- (2) the cemetery was established more than 75 years before the date the action was commenced;
- (3) a viable organization of plot owners of the cemetery does not exist; and
- (4) the cemetery threatens or endangers the public health,

safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.005. WRITTEN PLAN. (a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare;

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;

(D) restoration of damaged memorials; and

(E) restoration and maintenance of cemetery elements as defined by Section 711.001;

(2) the anticipated costs of the actions described under Subdivision (1);

(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;

(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;

(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which must be at least 10 percent of the total purchase price of the plot; and

(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;

(B) the interments in the cemetery;

(C) the total purchase price received from the sale of each plot in the cemetery;

(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and

(E) the income received by the nonprofit corporation from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 16, eff. September 1, 2009.

Sec. 715.006. SERVICE OF CITATION. (a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

(1) the record owners of the real property comprising the cemetery at their last known addresses;

(2) the owners of plots in the cemetery at their last known addresses;

(3) the Texas Historical Commission at its office in Austin, Texas;

(4) the Texas Funeral Service Commission; and

(5) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.

(c) If the address or identity of a plot owner is not known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice at least three times in a newspaper of general circulation in the county in which the cemetery is located. If there is not a newspaper of general circulation in the county in which the cemetery is located,

the notice may be published in a newspaper of general circulation in an adjoining county.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.  
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 41, eff. Sept. 1, 2003.

Sec. 715.007. HEARING. (a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.

(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.

(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.

(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.008. COURT ORDER. (a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:

(1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;

(2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and

(3) authorizing the nonprofit corporation to restore, operate, and maintain the cemetery is in the best interest of the public.

(b) The written plan must be incorporated in the court's order.

(c) The court's order is binding on all parties to the action.

(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.



Sec. 715.009. NONPROFIT CORPORATION. (a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.

(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.010. ORGANIZATIONAL MEETING. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:

(1) publish notice of the time and place of the organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and

(2) post written notice of the time and place of the meeting at the cemetery.

(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.

(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.

(d) At the organizational meeting of the members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery, a majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.011. POWERS AND DUTIES OF NONPROFIT CORPORATION;

TRUST FUND. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as

its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or criminally liable for acts performed in the good faith administration of the trust fund.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.012. CREMATORY PROHIBITED. A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a crematory.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.013. ADJACENT OR CONTIGUOUS CEMETERY. A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.014. CEMETERY OPEN TO PUBLIC. A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.015. EXEMPTION. This chapter does not apply to:

- (1) a perpetual care cemetery; or
- (2) a family cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

**CHAPTER 716. CREMATORIES****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 716.001. DEFINITIONS. In this chapter:

- (1) "Authorizing agent" means a person authorized to dispose of a decedent's remains under Section 711.002.
- (2) "Cemetery" has the meaning assigned by Section 711.001.
- (3) "Commission" means the Texas Funeral Service Commission.
- (4) "Cremated remains" means the recoverable human remains after the completion of the cremation process. The term may include the residue of any nonhuman matter cremated with the deceased human body including casket material, bridgework, eyeglasses, or other material.
- (5) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.
- (6) "Cremation chamber" means an enclosed retort used exclusively for cremation of human remains.
- (7) "Cremation container" means a casket or other container designed to transport a deceased human body and for placement in a cremation chamber during cremation.
- (8) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or similar material used for the ground burial of cremated remains that meets a cemetery's specifications.
- (9) "Crematory" means a structure containing a retort used or intended to be used for cremation of human remains.
- (10) "Crematory establishment" means a business that operates a crematory for which a license is required under Subchapter N, Chapter 651, Occupations Code.
- (11) "Funeral director" has the meaning assigned by Section 651.001, Occupations Code.
- (12) "Funeral establishment" has the meaning assigned by Section 651.001, Occupations Code.
- (13) "Scattering area" means an area designated for scattering cremated remains. The term includes dedicated cemetery property on which cremated remains may be:
  - (A) mixed with or placed on top of soil or ground

cover; or

(B) commingled and buried in an underground receptacle.

(14) "Temporary container" means a receptacle composed of cardboard, plastic, or similar material designed to temporarily store cremated remains until the remains are placed in an urn or other permanent container.

(15) "Urn" means a container designed to permanently store cremated remains.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.002. CREMATION RULES. The commission may adopt rules consistent with this chapter and Chapter 651, Occupations Code, to govern the cremation of human remains.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.003. LOCATION OF CREMATORY. (a) A crematory may be constructed on or adjacent to a perpetual care cemetery or adjacent to a funeral establishment.

(b) A crematory, other than a crematory registered with the commission on September 1, 2003, must:

(1) be adjacent to a perpetual care cemetery or funeral establishment; and

(2) be owned or operated by the person that owns or operates the perpetual care cemetery or funeral establishment.

(c) In this section, "adjacent to" means that a part of the property on which the crematory is to be constructed has a common boundary with:

(1) the perpetual care cemetery or property on which the funeral establishment is located; or

(2) a public easement, a utility easement, or a railroad right-of-way that has a common boundary with the perpetual care cemetery or property on which the funeral establishment is located.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory

establishment may accept deceased human remains for refrigeration before it receives authorization to cremate the remains under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 10, eff. September 1, 2009.

Sec. 716.004. WAITING PERIOD FOR CREMATION. (a) A crematory establishment may not cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by:

(1) a justice of the peace or medical examiner of the county in which the death occurred; or

(2) a court order.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(1), eff. September 1, 2009.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(1), eff. September 1, 2009.

Sec. 716.005. CREMATORY ESTABLISHMENT PROCEDURES. A crematory establishment may adopt procedures not inconsistent with this chapter for the management and operation of a crematory.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.006. APPLICABILITY OF CHAPTER TO OTHER LAW. This chapter may not be construed to require a funeral director to perform any act not otherwise authorized by other law.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. AUTHORIZATION REQUIREMENTS**

Sec. 716.051. CREMATION AUTHORIZATION. Except as otherwise provided in this chapter, a crematory establishment may not cremate

deceased human remains until it receives:

- (1) a cremation authorization form signed by an authorizing agent; and
- (2) a death certificate or other death record that indicates the deceased human remains may be cremated.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.052. CREMATION AUTHORIZATION FORM. (a) A cremation authorization form must:

- (1) identify the deceased person and the time and date of death;
- (2) include the name and address of the funeral director or other person that contracted to provide for the cremation;
- (3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person;
- (4) include a statement by the authorizing agent that:
  - (A) the authorizing agent has the right to authorize the cremation of the deceased person and is not aware of any person with a superior or equal priority right; or
  - (B) if another person has an equal priority right to authorize cremation, the authorizing agent:
    - (i) has made all reasonable efforts but failed to contact that person and believes the person would not object to the cremation; and
    - (ii) agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the person's authorization;
- (5) authorize the crematory establishment to cremate the human remains;
- (6) declare that to their knowledge the human remains do not contain a pacemaker or any other material or implant that may potentially be hazardous or cause damage to the cremation chamber or the person performing the cremation;
- (7) include the name of the funeral establishment or other person authorized to receive the cremated remains from the crematory establishment;
- (8) detail the manner of permanent disposition of the

cremated remains, if known;

(9) list any items of value delivered to the crematory establishment along with the human remains and include instructions on the handling of the items;

(10) specify whether the authorizing agent has arranged for a viewing of the deceased person or service with the deceased person present before cremation and the date and time of the viewing or service; and

(11) include the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form.

(b) A cremation authorization form must include a written notice to the authorizing agent that:

(1) the authorizing agent assumes responsibility for the disposition of the cremated remains; and

(2) the crematory establishment may:

(A) release to the authorizing agent, in person, the cremated remains of the deceased person;

(B) ship the cremated remains to the authorizing agent if the agent authorizes shipment and provides a shipping address on the authorization form; or

(C) dispose of the cremated remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not been claimed by the authorizing agent.

(c) A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

(d) A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

#### Sec. 716.053. DELEGATION OF CREMATION AUTHORIZATION AUTHORITY.

(a) An authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form.

(b) An authorizing agent's written delegation of authority must be notarized and include:

(1) the name and address of the authorizing agent and the



relationship of the authorizing agent to the deceased person;

(2) the name and address of the representative; and

(3) an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form.

(c) A crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This section applies and a cremation authorization form is not required under this chapter if:

(1) the deceased person has left written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g); and

(2) the authorizing agent refuses for any reason to sign a cremation authorization form.

(b) The crematory establishment may cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if:

(1) cremation costs are paid; and

(2) the authorizing agent provides positive written identification that the human remains to be cremated are the human remains of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 11, eff. September 1, 2009.

#### **SUBCHAPTER C. RECEIPT AND IDENTIFICATION OF REMAINS**

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. (a) Except as provided by Subsection (b), a crematory establishment may not accept for cremation unidentified human remains.

(b) Notwithstanding any other provision of this chapter, a crematory establishment may accept for cremation unidentified human remains from a county on the order of:

(1) the county commissioners court; or

(2) a court located in the county.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 747 (S.B. 571), Sec. 1, eff. June 19, 2009.

Sec. 716.102. RECEIPT ACKNOWLEDGING ACCEPTANCE OF REMAINS. (a)

A crematory establishment shall furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes:

(1) the signature and printed name of the representative who delivered the remains;

(2) the date and time of the delivery;

(3) the type of cremation container in which the remains were delivered;

(4) the name of the funeral establishment or other entity that contracted to provide for the cremation;

(5) the name of the individual who received the human remains on behalf of the crematory; and

(6) the name of the deceased person.

(b) The crematory establishment shall retain a copy of the receipt required by Subsection (a) in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY. (a)

A crematory establishment shall place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

(b) A crematory establishment shall place, with the cremated remains, in the temporary container, urn, or other permanent container, a permanent metal identification disc, bracelet, or other item that can be used to identify the deceased person.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 12, eff. September 1, 2009.

Sec. 716.104. IDENTIFICATION RESPONSIBILITIES OF FUNERAL DIRECTOR OR ESTABLISHMENT. (a) Except as provided by Section 716.054, a funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

(b) An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 13, eff. September 1, 2009.

#### **SUBCHAPTER D. CREMATION PROCEDURES**

Sec. 716.151. CREMATION CONTAINERS. (a) Human remains must be placed in a cremation container that:

- (1) is made of combustible materials suitable for cremation;
- (2) provides a complete covering of the body;
- (3) is resistant to leakage or spillage;
- (4) is rigid for easy handling; and
- (5) protects the health and safety of crematory personnel.

(b) A crematory establishment may not remove human remains from a cremation container and must cremate the cremation container with the human remains.

(c) Except as provided by this section, a crematory establishment may not:

- (1) require that deceased human remains be placed in a casket before cremation or that remains be cremated in a casket; or
- (2) refuse to accept for cremation remains that have not been placed in a casket.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.152. CREMATION PROCESS. (a) A crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids.

(b) A person other than a crematory establishment employee, the authorizing agent, or representatives delegated as provided by Section 716.053 and approved by the crematory establishment may not be present in a crematory area during:

- (1) the cremation of deceased human remains; or
- (2) the removal of the remains from the cremation chamber.

(c) Immediately before placing deceased human remains in a cremation chamber, a crematory establishment employee must verify and remove the identification label from the cremation container and place the label near the cremation chamber control panel until the cremation process is complete.

(d) To the extent practicable, the crematory establishment shall remove all recoverable cremation residue from the cremation chamber following cremation and pulverize any bone fragments to a particle size of one-eighth inch or less as necessary. The crematory establishment shall remove and dispose of any other material included with the residue.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 14, eff. September 1, 2009.

Sec. 716.153. SIMULTANEOUS CREMATION. (a) A crematory establishment may not simultaneously cremate the deceased human remains of more than one person in the same cremation chamber unless authorized in writing by the authorizing agent of each deceased person.

(b) A crematory establishment is not civilly or criminally liable for commingling human remains during cremation if each authorizing agent provides a signed written statement authorizing the simultaneous cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.154. PACEMAKERS. (a) A crematory establishment may not knowingly cremate deceased human remains containing a pacemaker or other potentially hazardous implant.

(b) An authorizing agent who knows of the existence of a pacemaker or other potentially hazardous implant in deceased human remains shall notify the funeral director and crematory establishment. The authorizing agent shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before cremation.

(c) If an authorizing agent discloses to the funeral director on the cremation authorization form the presence of a pacemaker or other potentially hazardous implant in the deceased human remains, the funeral director shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before delivering the remains to the crematory establishment.

(d) An authorizing agent or funeral director that violates Subsection (b) or (c) is liable to the crematory establishment in a civil action for any damages resulting from cremation of the remains containing the pacemaker or other potentially hazardous implant.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.155. TEMPORARY CONTAINER OR URN. (a) A crematory establishment shall place the cremated remains with proper identification in a temporary container or urn unless otherwise instructed in writing by the authorizing agent.

(b) The crematory establishment may not commingle the cremated remains with other cremated remains or include any other object or material in the temporary container or urn unless authorized in writing by the authorizing agent unless otherwise provided by this chapter.

(c) A crematory establishment shall place a label on a temporary container that:

(1) discloses the temporary container is not intended for the permanent storage of cremated remains in a niche, crypt, cremation interment container, or interment space;

(2) includes the deceased person's name; and

(3) includes the name of the crematory establishment.

(d) A crematory establishment shall release all cremated remains to an authorizing agent, a representative delegated as provided by Section 716.053, or an employee of the funeral establishment if the authorizing agent authorized the release on the authorization form. Any cremated remains that do not fit in a temporary container or urn must be returned to the authorizing agent, representative, or employee in a separate temporary container that meets the requirements of this section.

(e) A crematory establishment may ship cremated remains only by a method with an internal tracking system that provides a receipt signed by the person accepting delivery. The outside of the container in which the cremated remains are placed for shipment must display a label that includes:

- (1) the deceased person's name;
- (2) the name of the crematory establishment; and
- (3) a warning that the container is temporary, if a temporary container is used.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.156. RELEASE OF REMAINS. (a) A crematory establishment shall:

- (1) release the cremated remains to a representative of the funeral establishment that delivered the deceased human remains to the crematory establishment;
- (2) release the cremated remains to the person authorized to receive the remains on the cremation authorization form;
- (3) ship the remains to the shipping address provided by the authorizing agent on the cremation authorization form not later than the 30th day following the date of cremation; or
- (4) release the cremated remains according to written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g).

(b) A crematory establishment shall furnish to a person who receives the cremated remains a receipt that includes:

- (1) the date and time of release;
- (2) the printed name of the person who receives the cremated remains;

(3) the name of the funeral establishment or other entity who contracted to provide for the cremation;

(4) the printed name of the person who released the cremated remains on behalf of the crematory establishment; and

(5) the name of the deceased person.

(c) A crematory establishment shall retain a copy of the receipt required by this section in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 15, eff. September 1, 2009.

#### **SUBCHAPTER E. DISPUTES AND LIABILITY**

Sec. 716.201. CREMATION DISPUTE. (a) Until authorized by a valid court order, a crematory establishment, funeral establishment, cemetery, or other person may refuse to accept deceased human remains or to perform a cremation if the crematory establishment, funeral establishment, cemetery, or person is aware of:

(1) a dispute that has not been resolved or settled concerning the cremation of the remains;

(2) a reasonable basis for questioning any representation made by the authorizing agent; or

(3) any other lawful reason for refusing to accept or cremate the remains.

(b) A crematory establishment, funeral establishment, cemetery, or other person aware of any dispute concerning the release or disposition of the cremated remains may refuse to release the remains until:

(1) the dispute has been resolved or settled; or

(2) authorized by a valid court order to release or dispose of the remains.

(c) A crematory establishment, funeral establishment, cemetery, or other person is not liable in a civil action or criminal prosecution for refusing to accept or cremate human remains in accordance with Subsection (a) or for refusing to release or dispose of or releasing or disposing of cremated remains in accordance with Subsection (b).

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.202. LIABILITY OF AUTHORIZING AGENT. An authorizing agent who signs a cremation authorization form is subject to Section 711.002(f) and attests to the truthfulness of the facts set forth in the form, including the identity of the deceased person and the agent's authority under this chapter and Section 711.002.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.203. LIABILITY OF CREMATORY ESTABLISHMENT, FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, CEMETERY, OR OTHER PERSON. (a) A crematory establishment, funeral establishment, funeral director, cemetery, or other person that contracts to provide for a cremation, accepts human remains, cremates human remains, or releases or disposes of the cremated remains as provided on a cremation authorization form is not criminally or civilly liable for performing the actions authorized.

(b) A crematory establishment or funeral establishment is not criminally or civilly liable for disposing of cremated remains after the 120th day after the date of cremation in accordance with this chapter if:

(1) the authorizing agent did not authorize shipment of the remains or provide a shipping address on the authorization form; and

(2) the authorizing agent did not claim the remains before the 121st day following the date of cremation.

(c) A crematory establishment is not liable in a civil action or criminal prosecution for any valuables delivered with human remains if the crematory establishment exercises reasonable care in protecting the valuables.

(d) A crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for representations made by the authorizing agent or the agent's representative in the cremation authorization form.

(e) The commission may not initiate disciplinary action against a crematory establishment on the basis of a complaint based on the conduct of an employee, agent, or representative of the establishment that is:



- (1) performed outside of the scope and authority of employment; or
- (2) contrary to the written instructions of the crematory establishment.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY; WRITTEN DIRECTIONS. (a) In this section:

- (1) "Cemetery organization" has the meaning assigned by Section 711.001.
- (2) "Embalmer" has the meaning assigned by Section 651.001, Occupations Code.

(b) If Section 716.054(a) applies, a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment is not criminally liable or liable in a civil action for:

- (1) cremating the human remains of a deceased person; or
- (2) carrying out the written directions of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 16, eff. September 1, 2009.

#### **SUBCHAPTER F. RECORDS**

Sec. 716.251. CREMATORY ESTABLISHMENT RECORDS. (a) A crematory establishment shall maintain a record at its place of business of each cremation. The record must contain:

- (1) the name of the deceased person;
- (2) the date of the cremation;
- (3) the final disposition of the cremated remains; and
- (4) any other document required by this chapter.

(b) A record must be kept on file at least until the fifth anniversary of the cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. DISPOSITION OF REMAINS**

Sec. 716.301. TRANSPORT OF CREMATED REMAINS. On delivery of the cremated remains by a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent as provided by Section 716.053 may transport the remains without a permit in any manner in this state and finally dispose of the cremated remains in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.302. DISPOSITION OF CREMATED REMAINS. (a) An authorizing agent shall provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. The crematory establishment shall retain a copy of the statement in the crematory establishment's records.

(b) The authorizing agent is responsible for disposing of cremated remains.

(c) Not earlier than the 121st day following the date of cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or funeral establishment, if the cremated remains have been released to an employee of the funeral establishment in accordance with the authorization form, may dispose of the cremated remains in accordance with this subchapter. The crematory establishment or funeral establishment, as applicable, shall retain a record of the disposition in the establishment's records.

(d) An authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under Subsection (c).

(e) A person may dispose of cremated remains only:

(1) in a crypt, niche, grave, or scattering area of a dedicated cemetery;

(2) by scattering the remains over uninhabited public land, sea, or other public waterways in accordance with Section 716.304; or

(3) on private property as directed by the authorizing agent with the written consent of the property owner in accordance with Section 716.304.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.303. COMMINGLING OF REMAINS. Unless authorized in writing by the authorizing agent, a person may not:

- (1) dispose of or scatter cremated remains in a manner or at a location that commingles the remains with other cremated remains, except by air over a scattering area or by sea; or
- (2) place the cremated remains of more than one deceased person in the same urn or other container.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.304. SCATTERING REMAINS. A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 17, eff. September 1, 2009.

#### **SUBCHAPTER H. PENALTY**

Sec. 716.351. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) cremates human remains without receipt of:
  - (A) a cremation authorization form signed by an authorizing agent; or
  - (B) written directions for the disposition by cremation of the deceased person's human remains as provided in Section 711.002(g);
- (2) signs a cremation authorization form with actual knowledge that the form contains false or incorrect information; or
- (3) represents to the public that the person may cremate human remains without being licensed as provided by Subchapter N, Chapter 651, Occupations Code.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 18, eff.  
September 1, 2009.

**TITLE 9. SAFETY**  
**SUBTITLE A. PUBLIC SAFETY**  
**CHAPTER 751. MASS GATHERINGS**

Sec. 751.001. SHORT TITLE. This chapter may be cited as the  
Texas Mass Gatherings Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.002. DEFINITIONS. In this chapter:

(1) "Mass gathering" means a gathering:

(A) that is held outside the limits of a municipality;

(B) that attracts or is expected to attract:

(i) more than 2,500 persons; or

(ii) more than 500 persons, if 51 percent or more

of those persons may reasonably be expected to be younger than 21  
years of age and it is planned or may reasonably be expected that  
alcoholic beverages will be sold, served, or consumed at or around  
the gathering; and

(C) at which the persons will remain:

(i) for more than five continuous hours; or

(ii) for any amount of time during the period

beginning at 10 p.m. and ending at 4 a.m.

(2) "Person" means an individual, group of individuals,  
firm, corporation, partnership, or association.

(3) "Promote" includes organize, manage, finance, or hold.

(4) "Promoter" means a person who promotes a mass  
gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended  
by Acts 1999, 76th Leg., ch. 553, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 692 (S.B. 270), Sec. 1, eff. June 17,  
2005.

Sec. 751.003. PERMIT REQUIREMENT. A person may not promote a mass gathering without a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.004. APPLICATION PROCEDURE. (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.

(b) The application must include:

- (1) the promoter's name and address;
- (2) a financial statement that reflects the funds being supplied to finance the mass gathering and each person supplying the funds;
- (3) the name and address of the owner of the property on which the mass gathering will be held;
- (4) a certified copy of the agreement between the promoter and the property owner;
- (5) the location and a description of the property on which the mass gathering will be held;
- (6) the dates and times that the mass gathering will be held;
- (7) the maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;
- (8) the name and address of each performer who has agreed to appear at the mass gathering and the name and address of each performer's agent;
- (9) a description of each agreement between the promoter and a performer;
- (10) a description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;
- (11) a description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;
- (12) a description of the preparations made to provide adequate medical and nursing care; and

(13) a description of the preparations made to supervise minors who may attend the mass gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.005. INVESTIGATION. (a) After a permit application is filed with the county judge, the county judge shall send a copy of the application to the county health authority, the county fire marshal or the person designated under Subsection (c), and the sheriff.

(b) The county health authority shall inquire into preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county health authority shall submit to the county judge a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The county fire marshal shall investigate preparations for the mass gathering. If there is no county fire marshal in that county, the commissioners court shall designate a person to act under this section. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county fire marshal or the commissioners court designee shall submit to the county judge a report stating whether the fire marshal or designee believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.

(d) The sheriff shall investigate preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the sheriff shall submit to the county judge a report stating whether the sheriff believes that the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(e) The county judge may conduct any additional investigation that the judge considers necessary.

(f) The county health authority, county fire marshal or commissioners court designee, and sheriff shall be available at the hearing prescribed by Section 751.006 to give testimony relating to

their reports.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 553, Sec. 2, eff. June 18, 1999.

Sec. 751.0055. DELEGATION OF DUTIES OF COUNTY JUDGE. (a) The county judge of a county may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications for a permit under this chapter. The order may provide for allowing the county officer to revoke a permit under Section 751.008.

(b) An order of a county officer acting under the delegated authority of the county judge in regard to a permit has the same effect as an order of the county judge.

(c) During the period in which the order is in effect, the county judge may withdraw the authority delegated in relation to an application and the county judge may hear the application.

(d) The county judge may at any time revoke an order delegating duties under this section.

Added by Acts 2001, 77th Leg., ch. 1, Sec. 1, effective March 26, 2001.

Sec. 751.006. HEARING. (a) Not later than the 10th day before the date on which a mass gathering will begin, the county judge shall hold a hearing on the application. The county judge shall set the date and time of the hearing.

(b) Notice of the time and place of the hearing shall be given to the promoter and to each person who has an interest in whether the permit is granted or denied.

(c) At the hearing, any person may appear and testify for or against granting the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.007. FINDINGS AND DECISION OF COUNTY JUDGE. (a) After the completion of the hearing prescribed by Section 751.006, the county judge shall enter his findings in the record and shall

either grant or deny the permit.

(b) The county judge may deny the permit if he finds that:

(1) the application contains false or misleading information or omits required information;

(2) the promoter's financial backing is insufficient to ensure that the mass gathering will be conducted in the manner stated in the application;

(3) the location selected for the mass gathering is inadequate for the purpose for which it will be used;

(4) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(5) the promoter does not have assurance that scheduled performers will appear;

(6) the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(7) the preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(8) adequate arrangements for traffic control have not been provided; or

(9) adequate medical and nursing care will not be available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.008. PERMIT REVOCATION. (a) The county judge may revoke a permit issued under this chapter if the county judge finds that preparations for the mass gathering will not be completed by the time the mass gathering will begin or that the permit was obtained by fraud or misrepresentation.

(b) The county judge must give notice to the promoter that the permit will be revoked at least 24 hours before the revocation. If requested by the promoter, the county judge shall hold a hearing on the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.009. APPEAL. A promoter or a person affected by the



granting, denying, or revoking of a permit may appeal that action to a district court having jurisdiction in the county in which the mass gathering will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1, Sec. 2, eff. March 26, 2001.

Sec. 751.010. RULES. (a) After notice and a public hearing, the Texas Board of Health shall adopt rules relating to minimum standards of health and sanitation to be maintained at mass gatherings.

(b) After notice and a public hearing, the Department of Public Safety shall adopt rules relating to minimum standards that must be maintained at a mass gathering to protect public safety and maintain order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.011. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 751.003.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than 90 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.012. INSPECTIONS. (a) The county health authority may inspect a mass gathering during the mass gathering to ensure that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders are being maintained. If the county health authority determines a violation of the minimum standards is occurring, the health authority may order the promoter of the mass gathering to correct the violation.

(b) The county fire marshal or the person designated under Section 751.005(c) may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders are being maintained. If the marshal or commissioners

court designee determines a violation of the minimum standards is occurring, the marshal or designee may order the promoter of the mass gathering to correct the violation.

(c) The sheriff may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public safety and order prescribed by state and local laws, rules, and orders are being maintained. If the sheriff determines a violation of the minimum standards is occurring, the sheriff may order the promoter of the mass gathering to correct the violation.

(d) A promoter who fails to comply with an order issued under this section commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

Sec. 751.013. INSPECTION FEES. (a) A commissioners court may establish and collect a fee for an inspection performed under Section 751.012. The fee may not exceed the amount necessary to defray the costs of performing the inspections. The fee shall be deposited into the general fund of the county.

(b) A commissioners court may use money collected under this section to reimburse the county department or, if a state agency performs the inspection on behalf of the county, the state agency, the cost of performing the inspection.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

#### **CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES**

Sec. 752.001. DEFINITIONS. In this chapter:

(1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.

(2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## Sec. 752.002. EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES.

(a) This chapter does not apply to the construction, reconstruction, operation, or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment that are part of a rail transportation system, an electrical generating, transmission, or distribution system, or a communication system.

(b) In this section, "authorized person" means:

(1) an employee of a light and power company, an electric cooperative, or a municipality working on his employer's electrical system;

(2) an employee of a transportation system working on the system's electrical circuits;

(3) an employee of a communication utility;

(4) an employee of a state, county, or municipal agency that has authorized circuit construction on the poles or structures that belong to an electric power company, an electric cooperative, a municipal or transportation system, or a communication system;

(5) an employee of an industrial plant who works on the plant's electrical system; or

(6) an employee of an electrical or communications contractor who is working under the contractor's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.003. TEMPORARY CLEARANCE OF LINES. (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

(c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.

(d) If the actual expense of providing the clearance is less than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.004. RESTRICTION ON ACTIVITIES NEAR LINES. (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:

(1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or

(2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.

(b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.005. RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES. Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

(1) erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;

(2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or

(3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.007. CRIMINAL PENALTY. (a) A person, firm, corporation, or association or an agent or employee of a person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, confinement in jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.008. LIABILITY FOR DAMAGES. If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **CHAPTER 753. FLAMMABLE LIQUIDS**

Sec. 753.001. DEFINITIONS. In this chapter and in the rules adopted under this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle and are stored

or blended in bulk for distribution by tank car, tank vehicle, or container.

(3) "Flammable liquid" means a liquid having a flash point below 140°F Fahrenheit and having a vapor pressure of not more than 40 pounds per square inch (absolute) at 100°F Fahrenheit. The term does not include a liquefied petroleum gas.

(4) "Mobile service unit" means a vehicle, tank truck, or other mobile device from which a flammable liquid used as motor fuel may be dispensed as an act of retail sale into the fuel tank of a motor vehicle parked on an off-street parking facility.

(5) "Person" means an individual, firm, association, corporation, or other private entity.

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 223, eff. Sept. 1, 1991.

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

Added by Acts 1991, 72nd Leg., ch. 628, Sec. 7, eff. Sept. 1, 1991.

Sec. 753.002. MOBILE SERVICE UNITS. (a) The board shall adopt rules for the safe movement and operation of mobile service units and the safe dispensing of flammable liquids by mobile service units.

(b) A municipality may require a license for the operation of each mobile service unit in the municipality and may charge a reasonable license fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS. (a)

The board shall administer this chapter through the state fire marshal and shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the most recent published standards of the National Fire Protection Association, including standards in effect on or after August 1, 1989, for the storage, handling, and use of flammable liquids at retail service stations.

(c) In adopting rules, the board may use recognized standards, including:

- (1) standards recognized by the federal government;
- (2) standards published by a nationally recognized standards-making organization; and
- (3) specifications and instructions of manufacturers.

(d) This chapter or a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 224, eff. Sept. 1, 1991.

Sec. 753.004. STORAGE TANKS. (a) Except as provided by Subsection (d), flammable liquids may not be stored at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail service station may not be limited.

(b) A retail service station may operate in conjunction with a bulk plant that has aboveground storage tanks if:

(1) there are separate underground tanks having a capacity of not less than 550 gallons each for final storage and dispensing of flammable liquids into motor vehicle fuel tanks; and

(2) any piping that connects the bulk plant storage tanks with the retail service station's underground tanks is equipped with a valve that is within the control of the retail service station operator and that is kept closed and locked when the underground tanks are not being filled.

(c) Each aboveground tank at a bulk plant that is operated in conjunction with a retail service station that is on the same or

contiguous property must be equipped with emergency vents of the types and capacities prescribed by standards adopted under Section 753.003.

(d) Gasoline, diesel fuel, or kerosene may be stored in an aboveground storage tank with a capacity of not more than 4,000 gallons at a retail service station located in an unincorporated area or in a municipality with a population of less than 5,000.

(e) Under Subsection (d), a retail service station may have a tank not exceeding the specified capacity for each separate grade of gasoline, diesel fuel, or kerosene, but may not have more than one tank of that capacity for the same grade.

(f) A new aboveground storage tank may not be constructed within:

(1) 15 feet of an adjoining property line, including the full width of the right-of-way of a public road that runs between the property on which the proposed tank site is located and an adjoining property;

(2) 15 feet of the right-of-way line of a public road that is nearest to the proposed tank site;

(3) five feet of an established place of business or other building designated by board rule;

(4) 100 feet of the property line of any established school, hospital, nursing home, day-care center, preschool, or nursery school; or

(5) 15 feet of any fuel dispenser.

(g) In adopting rules under Section 753.003, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsection (d). Except as provided by Subsection (f), the rules may not be more stringent than the standards of the National Fire Protection Association.

(h) The authority of a retail service station to store flammable liquids in an aboveground storage tank under Subsection (d) is not affected by a change in the boundaries or population of a municipality that occurs after the date the retail service station begins operation, unless prohibited by municipal ordinance. A municipal ordinance prohibiting the use of aboveground storage tanks may not take effect before the second anniversary of the date on which the ordinance was adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended



by Acts 1991, 72nd Leg., ch. 14, Sec. 225, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 902, Sec. 1, eff. June 16, 1991.

Sec. 753.005. VEHICLE REGULATIONS. The size and weight of and load carried by a vehicle used to transport or deliver flammable liquid from a point of origin to a point of destination may not be limited unless the limitation is in accordance with an applicable state motor vehicle and highway law and a municipal or county ordinance or rule in effect on September 1, 1969.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.006. UNIFORMITY AND CONFORMITY. (a) A county or municipality may not enact or enforce an ordinance or rule that is inconsistent with this chapter or the board's rules unless allowed by this chapter.

(b) If a municipality by ordinance adopted rules relating to mobile service units not later than 180 days after the board adopted rules relating to mobile service units and the rules adopted by the municipality are more restrictive than the board's rules, the rules are not invalid under Subsection (a).

(c) This chapter does not invalidate a municipal or county ordinance or rule that was in effect on September 1, 1969, and that relates to the storage of flammable liquids or relates to or prohibits mobile service units.

(d) The board rules must provide that a facility that is in service before the effective date of an applicable rule and that is not in strict conformity with the rule may continue in service if the facility does not constitute a distinct hazard to life or property. The rules may delineate the type of nonconformities that should be considered distinctly hazardous and the nonconformities that should be evaluated in light of local conditions. The rules must provide that a person who owns a facility affected by the rules receives reasonable notice of intent to evaluate the need for compliance and the time and place at which the person may appear to offer evidence on that issue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT. In an action for declaratory judgment on the validity or applicability of a rule adopted by the board under this chapter, citation shall be served on the state fire marshal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 226, eff. Sept. 1, 1991.

Sec. 753.008. ENFORCEMENT. (a) The Texas Natural Resource Conservation Commission has concurrent jurisdiction with the board regarding the inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this chapter. The Texas Natural Resource Conservation Commission has the primary authority for inspection of initial installation of the tanks. The Texas Natural Resource Conservation Commission shall report all violations of this chapter in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

(b) Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 227, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.253, eff. Sept. 1, 1995.

Sec. 753.009. INJUNCTIVE RELIEF. (a) The board may bring suit against a person who appears to be violating or threatening to violate a rule adopted under this chapter to restrain the person from violating or continuing to violate the rule.

(b) The suit shall be brought in the district court having jurisdiction in the county in which the violation or threat of violation occurs. At the board's request, the attorney general shall represent the board.

(c) In the suit, the court may grant the board any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.010. CIVIL PENALTY. (a) A person who violates a rule adopted under this chapter is liable to the state for a civil penalty of not more than \$100 for each day the person violates the rule.

(b) The civil penalty is recoverable in a district court in:

- (1) Travis County;
- (2) the county in which the person resides; or
- (3) the county in which the violation occurs.

(c) At the board's request, the attorney general shall institute and conduct a suit in the name of the state to recover the penalty.

(d) The civil penalty provided by this section may be in addition to or in lieu of the criminal penalty prescribed by Section 753.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.011. CRIMINAL PENALTY. (a) A person who is engaged in the business of storing, selling, or handling flammable liquids commits an offense if the person violates a rule adopted under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a person continues to violate a rule adopted under this chapter constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 228, eff. Sept. 1, 1991.

#### **CHAPTER 754. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT**

Sec. 754.011. DEFINITIONS. In this chapter:

(1) "Acceptance inspection" means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) "Accident" means an event involving equipment that results in death or serious bodily injury to a person.

(3) "Alteration" means a change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a

cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) "Annual inspection" means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) "ASCE" means the American Society of Civil Engineers.

(6) "ASCE Code 21" means the American Society of Civil Engineers Code 21 for people movers operated by cables, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(7) "ASME" means the American Society of Mechanical Engineers.

(8) "ASME Code A17.1" means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (Bi-national standard with CSA B44-2007), ASME A17.1/CSA-B44, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(9) "ASME Code A17.3" means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(10) "ASME Code A18.1" means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(11) "Board" means the elevator advisory board.

(12) "Commission" means the Texas Commission of Licensing and Regulation.

(13) "Contractor" means a person engaged in the installation, alteration, testing, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(14) "Department" means the Texas Department of Licensing and Regulation.

(15) "Equipment" means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(16) "Executive director" means the executive director of the department.

(17) "Industrial facility" means a facility to which access is primarily limited to employees or contractors working in that facility.

(18) "Inspector" means a person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards.

(19) "Owner" means a person, company, corporation, authority, commission, board, governmental entity, institution, or other entity that holds title to a building or facility in which equipment regulated by this chapter is located.

(20) "Qualified historic building or facility" means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(21) "Related equipment" means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover operated by cables, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(22) "Serious bodily injury" means a major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(23) "Unit of equipment" means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 1, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 4, eff. June 16, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 1, eff. September 1, 2013.

Sec. 754.0111. EXEMPTIONS. (a) This chapter does not apply to equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This chapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

(c) This chapter does not apply to equipment located in a building owned and operated by the federal government.

(d) This chapter does not apply to equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily to employees of or working in that facility or structure.

Added by Acts 1995, 74th Leg., ch. 974, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 2, eff. September 1, 2013.

Sec. 754.0112. INSTITUTION OF HIGHER EDUCATION: EMPLOYEE DUTIES AND INSURANCE REQUIREMENT. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding any contrary provision of this chapter, this chapter does not prohibit a registered elevator inspector or registered contractor from performing an activity regulated by this chapter or the rules adopted under this chapter if the inspector or contractor is performing the activity as an employee of an institution of higher education.

(c) Notwithstanding any contrary provision of this chapter,

this chapter does not prohibit a registered elevator inspector or registered contractor performing an activity described by Subsection (b) as an employee of an institution of higher education from providing written evidence of self-insurance coverage to satisfy an insurance requirement under this chapter or rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 3, eff. September 1, 2013.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) a representative of the insurance industry or a registered elevator inspector;

(2) a representative of equipment constructors;

(3) a representative of owners or managers of a building having fewer than six stories and having equipment;

(4) a representative of owners or managers of a building having six stories or more and having equipment;

(5) a representative of independent equipment maintenance companies;

(6) a representative of equipment manufacturers;

(7) a licensed or registered engineer or architect;

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission.

(c) The presiding officer of the commission, with the commission's approval, shall appoint a presiding officer of the board to serve for two years.

(d) The board shall meet as determined by the executive director or by the presiding officer of the commission.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;

Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts

2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 4, eff. September 1, 2013.

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission on:

- (1) the adoption of appropriate standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment;
- (2) the status of equipment used by the public in this state;
- (3) sources of information relating to equipment safety;
- (4) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and
- (5) any other matter considered relevant by the commission.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 5, eff. September 1, 2013.

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION. (a) The commission by rule shall adopt standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment used by the public in:

- (1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and
- (2) buildings that contain equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other



commercial establishment.

(b) Standards adopted under commission rules may not contain requirements in addition to the requirements in the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this chapter at the time of alteration.

(c) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the equipment.

(d) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.3 that contains minimum safety standards for all equipment, regardless of the date of installation.

(e) The executive director may grant a delay for compliance with the codes and adopted standards until a specified time if the executive director determines that the noncompliance does not constitute a significant threat to passenger or worker safety. The accumulated total time of all delays for a specific noncompliant condition may not exceed three years, except as determined by the executive director.

(g) The executive director may grant a waiver of compliance from an applicable code requirement if the executive director finds that:

(1) the building in which the equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building;

(2) noncompliance will not constitute a significant threat to passenger safety; and

(3) noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.

(h) The executive director shall grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger.

(h-1) The executive director may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

- (1) is used only for parking;
- (2) is constructed of noncombustible materials; and
- (3) is not greater than 75 feet in height.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(3), eff. September 1, 2013.

(j) One application for a waiver or delay may contain all requests related to a unit of equipment.

(k) For purposes of determining the applicable standards and codes under this chapter, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the equipment was installed or altered or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the equipment was installed.

(l) Standards adopted under commission rules may include and be guided by revised versions of ASME Code A17.1, ASME Code A18.1, and ASCE Code 21, as appropriate.

(m) The executive director may on application of a person and in accordance with procedures adopted under commission rules, grant a variance to allow the installation of new technology if the new component, system, subsystem, function, or device is equivalent or superior to the standards adopted under commission rules.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 974, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1268, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. [1729](#)), Sec. 2, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1181 (H.B. [3628](#)), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. [673](#)), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. [673](#)), Sec. 23(3), eff.

September 1, 2013.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a registered elevator inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.

(b) The commission shall adopt rules containing minimum safety standards that must be used by registered elevator inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.

(c) A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the inspection report to the municipality.

(d) A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.

(e) On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a registered elevator inspector.

(f) An inspection by a registered elevator inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.0231, 754.0232, 754.0233, 754.0234, or 754.0235.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 110 (S.B. 972), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 7, eff.

September 1, 2013.

Sec. 754.015. RULES. (a) The commission by rule shall provide for:

- (1) an annual inspection and certification of the equipment covered by standards adopted under this chapter;
- (2) enforcement of those standards;
- (3) registration, including certification, of elevator inspectors;
- (4) registration of contractors;
- (5) the procedures by which a certificate of compliance is issued and displayed;
- (6) notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;
- (7) approval of continuing education programs for registered elevator inspectors;
- (8) standards of conduct for individuals who are registered under this chapter;
- (9) general liability insurance written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code, as a condition of contractor registration with coverage of not less than:
  - (A) \$1 million for each single occurrence of bodily injury or death; and
  - (B) \$500,000 for each single occurrence of property damage;
- (10) the submission and review of plans for the installation or alteration of equipment;
- (11) continuing education requirements for renewal of contractor registration;
- (12) maintenance control programs, maintenance, repair, and parts manuals, and product-specific inspection, testing, and maintenance procedures;
- (13) the method and manner of reporting accidents and reportable conditions to the department; and
- (14) an owner's designation of an agent for purposes of this chapter.

(b) The commission by rule may not:

(1) require inspections of equipment to be made more often than every 12 months, except as provided by Subsection (c); or

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration, except as otherwise provided by this chapter.

(c) The commission by rule may require a reinspection or recertification of equipment if:

(1) the equipment has been altered;

(2) the equipment poses a significant threat to passenger or worker safety; or

(3) an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an elevator inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) submitting for review plans for the installation or alteration of equipment;

(6) reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations;

(7) applying for a waiver, new technology variance, or delay; and

(8) attending a continuing education program sponsored by the department for registered elevator inspectors.

(e) The commission by rule may require inspection reports, other documents, and fees to be filed in a manner prescribed by the department, including electronically.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;

Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 3, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 8, eff. September 1, 2013.

Sec. 754.016. INSPECTION REPORTS AND CERTIFICATES OF COMPLIANCE. (a) Inspection reports and certificates of compliance required under this chapter must cover all equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons.

(b) A registered elevator inspector shall issue an inspection report to the owner not later than the fifth calendar day after the date of inspection in accordance with the procedures established by commission rule.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 538,  
Sec. 4

(c) The executive director shall date and sign a certificate of compliance and shall issue the certificate to the building owner. The certificate of compliance shall state:

(1) that the equipment has been inspected by a registered elevator inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection; and

(3) contact information at the department to report a violation of this subchapter.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 558,  
Sec. 9

(c) The executive director shall issue a certificate of compliance to the owner.

(d) The commission by rule shall:

- (1) require that a certificate of compliance for any equipment be posted in a publicly visible area of the building; and
- (2) determine what constitutes a "publicly visible area" under Subdivision (1).

(e) The department shall prescribe the format and the required information contained in the inspection reports, the certificates of compliance, and other documents.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;  
Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts  
2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 4, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 9, eff.  
September 1, 2013.

Sec. 754.017. REGISTERED ELEVATOR INSPECTORS. (a) In order to inspect equipment, an individual must:

- (1) be registered with the department;
- (2) attend educational programs approved by the department;
- (3) be certified as an inspector in accordance with the rules adopted by the commission;
- (4) comply with the continuing education requirements established by commission rule for registration renewal; and
- (5) pay all applicable fees.

(b) A person assisting a registered elevator inspector and working under the direct, on-site supervision of the inspector is not required to be registered.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A registered elevator inspector may not inspect equipment if the inspector or the inspector's employer has a financial or personal conflict of interest or the appearance of impropriety related to the inspection of that equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;

Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 11, eff. September 1, 2013.

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may not install, repair, alter, test, or maintain equipment without registering as a contractor with the department as required by this chapter.

(b) A contractor shall submit an application for registration or renewal of registration, as applicable, and pay appropriate fees to the department. The registration application form shall require:

(1) information concerning the background, experience, and identity of the applicant;

(2) designation of and information regarding the responsible party or parties under Section 754.0173; and

(3) documentation of fulfillment of the continuing education requirements for renewal of registration, if applicable.

(c) A registration expires on the first anniversary of the date of issuance.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(f) Installation, repair, alteration, testing, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 3, eff.



June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(4), eff. September 1, 2013.

Sec. 754.0172. INSPECTION FEE. The amount charged for an inspection or the performance of an inspection of equipment under this chapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Added by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 754.0171 and amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 13, eff. September 1, 2013.

Sec. 754.0173. DESIGNATION OF RESPONSIBLE PARTY OR PARTIES.

(a) Each contractor who registers with the department must designate at least one but not more than two responsible parties.

(b) A responsible party designated under this section must:

(1) have a minimum of three years of elevator contractor experience related to elevator installation, repair, and maintenance; and

(2) comply with continuing education requirements as determined by commission rule in order for an elevator contractor to renew an elevator contractor registration.

(c) The commission shall adopt rules regarding documentation of the completion of the continuing education to accompany the application for registration.

(d) A responsible party may be added to or removed from the registration at any time by providing written notice to the department. If a responsible party is added to a registration, the written notice must include evidence that the responsible party meets the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 4, eff. June 17, 2011.

Sec. 754.0174. CONTINUING EDUCATION FOR RENEWAL OF ELEVATOR INSPECTOR AND CONTRACTOR REGISTRATIONS. (a) Each contractor's responsible party must complete continuing education requirements set by commission rule before the contractor may renew the contractor's registration.

(a-1) Each registered elevator inspector must complete continuing education requirements set by commission rule before the inspector may renew the inspector's registration.

(b) A provider of continuing education under this section must:

(1) register with the department; and

(2) comply with rules adopted by the commission relating to continuing education for a registered elevator inspector or designated responsible party, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 4, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 15, eff. September 1, 2013.

Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section 754.014(h), if a municipality operates a program for the installation, maintenance, alteration, inspection, testing, or certification of equipment, this chapter shall not apply to the equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, testing, and certification are at least equivalent to those contained in this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 16, eff. September 1, 2013.

Sec. 754.019. DUTIES OF OWNERS. (a) The owner shall:

(1) have the equipment inspected annually by a registered elevator inspector;

(2) obtain an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with this chapter and rules adopted under this chapter;

(3) file with the executive director each inspection report, and all applicable fees, not later than the 30th calendar day after the date on which an inspection is made under this chapter;

(4) display the certificate of compliance for the equipment in a publicly visible area as defined by commission rule; and

(5) maintain the equipment in compliance with the standards and codes adopted under commission rules.

(b) When an inspection report is filed, the owner shall submit to the executive director, as applicable:

(1) verification that any deficiencies in the registered elevator inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) For the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b), an inspection report and filing fees are considered filed on the earlier of:

(1) the date of personal delivery;

(2) the date of postmark by United States mail if properly addressed to the executive director; or

(3) the date of deposit with a commercial courier service, if properly addressed to the executive director.

(d) A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.

(e) An owner shall report to the department each accident involving equipment not later than 24 hours following the accident.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;  
Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts  
2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 9, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 17, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 18, eff.  
September 1, 2013.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR. The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:

(1) may not have a financial or commercial interest in the manufacture, maintenance, repair, inspection, installation, or sale of equipment; and

(2) must possess the certification or obtain the certification required under Section 754.017 within six months after becoming chief elevator inspector.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;  
Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts  
2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 10, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 19, eff.  
September 1, 2013.

Sec. 754.021. LIST OF REGISTERED ELEVATOR INSPECTORS AND CONTRACTORS; PERSONNEL. The executive director shall:

(1) compile a list of elevator inspectors and contractors who are registered with the department; and

(2) employ personnel who are necessary to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;  
Acts 2003, 78th Leg., ch. 816, Sec. 9.001, 26.006, eff. Sept. 1,  
2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 11, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 20, eff.  
September 1, 2013.

Sec. 754.023. INVESTIGATION; REGISTRATION PROCEEDINGS;  
INJUNCTION; EMERGENCY ORDERS.

Without reference to the amendment of this subsection, this section  
was repealed by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec.  
23(5), eff. September 1, 2013.

(k) If an emergency order to disconnect power or lock out  
equipment is issued, the building owner or manager may have the power  
reconnected or the equipment unlocked only if:

(1) a registered elevator inspector, a registered  
contractor, or a department representative has filed a written form  
with the department verifying the imminent and significant danger has  
been removed by repair, replacement, or other means; and

(2) the building owner, before the reconnection of power or  
unlocking of equipment, reimburses the department for all expenses  
incurred relating to the disconnection of power or lockout.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;  
Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts  
2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 12, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(5), eff.  
September 1, 2013.

Sec. 754.0231. INSPECTIONS AND INVESTIGATIONS. (a) Except as provided by Subsection (b), the department may conduct an inspection or investigation of equipment regulated under this chapter in accordance with Chapter 51, Occupations Code. The department shall be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation of the equipment.

(b) If there is good cause for the executive director to believe that equipment on the property poses an imminent and significant danger or that an accident involving equipment occurred on the property, the executive director or the executive director's designee may at any time enter the property to inspect the equipment or investigate the danger or accident. The executive director or the executive director's designee must be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0232. REGISTRATION PROCEEDINGS. (a) The commission or executive director may deny, suspend, or revoke a registration under this chapter and may assess an administrative penalty for:

- (1) obtaining registration by fraud or false representation;
- (2) falsifying a report submitted to the executive director; or
- (3) violating this chapter or a rule adopted under this chapter.

(b) Proceedings for the denial, suspension, or revocation of a registration and appeals from these proceedings are governed by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0233. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The

attorney general or the executive director may institute an action for injunctive relief to prevent or restrain a violation or threatened violation of this chapter or a rule adopted under this chapter.

(b) The attorney general or the executive director may institute an action to collect a civil penalty from a person that appears to be violating or threatening to violate this chapter or a rule adopted under this chapter. A civil penalty assessed under this subsection may not exceed \$5,000 per day for each violation.

(c) An action filed under this section must be filed in a district court in Travis County.

(d) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief or civil penalties under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0234. EMERGENCY ORDERS. (a) The executive director may issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director shall issue an emergency order in accordance with Chapter 51, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0235. ORDERS TO DISCONNECT POWER TO OR LOCK OUT EQUIPMENT. (a) An emergency order issued in accordance with Section 754.0234 may also direct an owner to disconnect power to or lock out equipment if:

(1) the department determines imminent and significant danger to passenger or worker safety exists if action is not taken immediately; or

(2) an annual inspection has not been performed in more than two years.

(b) If an emergency order to disconnect power or lock out equipment is issued, the owner may have the power reconnected or the equipment unlocked only if a registered elevator inspector or contractor or a department representative verifies in writing to the department that the imminent and significant danger has been removed by repair, replacement, or other means.

(c) If an emergency order to disconnect power or lock out equipment is issued and the owner later notifies the department that the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (b) are satisfied, issue written permission to reconnect power or unlock the equipment and notify the owner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.025. APPLICATION OF CERTAIN LAW. Sections 51.401 and 51.404, Occupations Code, do not apply to this chapter, except those sections do apply to Sections 754.017 and 754.0171.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 22, eff. September 1, 2013.

## **CHAPTER 755. BOILERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 755.001. DEFINITIONS. In this chapter:

- (1) "Alteration" means a substantial change in an original design.
- (2) "Board" means the board of boiler rules.
- (3) "Boiler" means:
  - (A) a heating boiler;
  - (B) a nuclear boiler;
  - (C) a power boiler;
  - (D) an unfired steam boiler; or
  - (E) a process steam generator.



(4) "Certificate inspection" means the required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(5) "Certificate of operation" means a certificate issued by the executive director to allow the operation of a boiler.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) "Department" means the Texas Department of Licensing and Regulation.

(7-a) "Executive director" means the executive director of the department.

(8) "External inspection" means an inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(9) "Heating boiler" means a steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(10) "High-temperature water boiler" means a water boiler designed for operation at pressures exceeding 160 pounds per square inch or temperatures exceeding 250 degrees Fahrenheit.

(11) "Hot water heating boiler" means a boiler designed for operation at a pressure not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.

(12) "Hot water supply boiler" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour;

(B) water temperature exceeds 210 degrees Fahrenheit;  
or

(C) nominal water-containing capacity exceeds 120 gallons.

(13) "Inspection agency" means an authorized inspection agency providing inspection services.

(14) "Inspector" means the chief inspector, a deputy inspector, or an authorized inspector.

(15) "Internal inspection" means a complete and thorough

inspection of the interior waterside and fireside areas of a boiler as construction allows.

(16) "Nuclear boiler" means a nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(17) "Portable power boiler" means a boiler primarily intended for use at a temporary location.

(18) "Potable water heater" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch and water temperatures not exceeding 210 degrees Fahrenheit if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour; or

(B) nominal water-containing capacity exceeds 120 gallons.

(19) "Power boiler" means:

(A) a high-temperature water boiler; or

(B) a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch for a purpose external to the boiler.

(20) "Process steam generator" means an evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(21) "Repair" means the work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(22) "Safety appliance" means a safety device such as a safety valve or a safety relief valve for a boiler provided to diminish the danger of accidents.

(23) "Standard boiler" means a boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(23-a) "Steam cooker" means a steam heating boiler that is:

(A) designed to steam cook food;

(B) operated at a pressure not exceeding five pounds per square inch; and

(C) equipped with a safety appliance operated at a pressure not exceeding five pounds per square inch.

(24) "Steam heating boiler" means a boiler designed for operation at pressures not exceeding 15 pounds per square inch.

(25) "Unfired steam boiler" means an unfired pressure vessel in which steam is generated. The term does not include:

(A) vessels known as evaporators or heat exchangers; or

(B) vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 229, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.001, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 1, eff. May 18, 2013.

#### **SUBCHAPTER B. BOARD OF BOILER RULES**

Sec. 755.011. COMPOSITION OF BOARD. (a) The Board of Boiler Rules is in the department.

(b) The board is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member representing organizations that repair or alter boilers in this state;

(5) one member representing a labor union; and

(6) two public members.

(c) All members except the members appointed under Subsection (b)(6) must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(d) The executive director serves as an ex officio board member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 18, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 5.002, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 1, eff. September 1, 2009.

Sec. 755.012. TERMS. Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.013. PRESIDING OFFICER. The chief inspector serves as presiding officer of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.003, eff. Sept. 1, 2003.

Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.004, eff. Sept. 1, 2003.

Sec. 755.015. COMPENSATION. A board member may not receive a salary but is entitled to reimbursement for actual expenses incurred in performing board duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.016. MEETINGS. The board shall meet at least twice each year at the call of the presiding officer at a place designated by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.005, eff. Sept. 1, 2003.

Sec. 755.017. POWERS AND DUTIES. The board shall advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.006, eff. Sept. 1, 2003.

Sec. 755.018. MAJORITY VOTE REQUIRED. A board decision is not effective unless supported by the vote of at least five board members.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. BOILER REGISTRATION AND INSPECTION**

Sec. 755.021. REGISTRATION AND CERTIFICATE. Except as provided by Section 755.022, each boiler operated in this state must:

- (1) be registered with the department; and
- (2) have qualified for a current certificate of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.022. EXEMPTIONS FOR CERTAIN BOILERS. (a) This

chapter does not apply to:

- (1) boilers owned or operated by the federal government;
- (2) pressure vessels or process steam generators, other than steam collection or liberation drums of process steam generators;
- (3) manually fired miniature boilers that:
  - (A) are constructed or maintained for locomotives, boats, tractors, or stationary engines only as a hobby for exhibition, recreation, education, or historical purposes and not for commercial use;
  - (B) have an inside diameter of 12 inches or less or a grate area of two square feet or less; and
  - (C) are equipped with a safety valve of adequate size, a water level indicator, and a pressure gauge;
- (4) boilers that are designed for operation only at atmospheric pressure and that are equipped with two independent means to prevent the buildup of pressure; or
- (5) steam cookers.

(b) Heating boilers used to heat buildings that are exclusively for residential use and that have accommodations for not more than four families are exempt from Sections 755.025, 755.027, 755.029, and 755.030.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 498, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 352, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 2, eff. May 18, 2013.

Sec. 755.023. APPOINTMENT OF INSPECTORS AND OTHER PERSONNEL.

- (a) The executive director shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:
- (1) be a resident of this state and a citizen of the United States;
  - (2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers; and
  - (3) pass a written examination that demonstrates the

necessary ability to judge the safety of boilers.

(b) The chief inspector may not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or boiler appurtenances.

(c) As needed, the executive director shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The executive director may employ clerical assistants as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.008, eff. Sept. 1, 2003.

Sec. 755.024. AUTHORIZED INSPECTORS; EXAMINATIONS. (a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the executive director and must be continuously employed by an inspection agency.

(b) The executive director, by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(d) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(e) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(f) After proper investigation, the executive director may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(g) For good cause, the executive director may rescind a commission issued by this state.

(h) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 230, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1), 26.009, eff. Sept. 1, 2003.

Sec. 755.025. INSPECTION. (a) The executive director shall require each boiler to be inspected internally and externally at the time of initial installation and at subsequent intervals as provided by this section. The executive director may provide that the

inspection be performed by any inspector.

(b) Power boilers, unfired steam boilers, and steam collection or liberation drums of process steam generators must receive an annual certificate inspection and an annual external inspection.

(c) Steam heating boilers and hot water heating boilers must receive a certificate inspection biennially.

(d) Hot water supply boilers and potable water heaters must receive a certificate inspection triennially.

(e) A portable power boiler must be inspected externally each time the boiler is moved to a new location and must receive an internal inspection at least annually.

(f) The executive director shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The executive director and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The executive director may authorize the inspection of a boiler at any reasonable time if the executive director determines that the boiler may be in an unsafe condition. The executive director shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the executive director notifies the inspection agency. An additional charge may not be made for the joint inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.010, eff. Sept. 1, 2003.

Sec. 755.026. EXTENSIONS. (a) With the approval of the executive director and the inspection agency that has jurisdiction for the power boiler, the interval between internal inspections may be extended to a period not exceeding a total of 60 months. For unfired steam boilers or steam collection or liberation drums of process steam generators, the inspection interval may be extended to the next scheduled downtime of the boiler, but not exceeding a total of:

- (1) 84 months for unfired steam boilers; or



(2) 120 months for steam collection or liberation drums of process steam generators.

(b) The interval between internal inspections of a boiler may be extended only if:

(1) continuous water treatment under competent and experienced supervision to control and limit corrosion and deposits has been in effect since its last internal inspection;

(2) the last internal and current external inspection of the boiler indicates that the interval may safely be extended; and

(3) accurate and complete records are available that show:

(A) that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not exceeding 24 hours of operation and that the water condition in the boiler is satisfactorily controlled;

(B) the dates that the boiler was out of service since the last internal inspection and the reasons that the boiler was taken out of service; and

(C) the nature of the repairs made to the boiler and the reasons that those repairs were made.

(c) In addition to an extension authorized under Subsection (a), the executive director and the inspection agency may grant an emergency extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met. The commissioner and the inspection agency may not grant more than one emergency extension under this subsection in an interval between internal inspections.

(d) If an extended period between internal inspections is approved by the executive director and the inspection agency, the executive director shall issue a new certificate of operation for the extended period of operation.

(e) If the interval between internal inspections of a gas fired boiler is extended under Subsection (a), the executive director and inspection agency shall require that an inspection of the gas regulator or pressure reducing valve that services the boiler be performed as part of the next regularly scheduled external certificate inspection of the boiler to verify proper venting of gas to a safe point of discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1242, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 352, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 18, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 26.011, eff. Sept. 1, 2003.

Sec. 755.027. REPORTS BY INSPECTION AGENCY; JOINT INSPECTIONS.

(a) Not later than the 30th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the executive director in the manner specified by the executive director.

(b) A boiler inspected by an authorized inspector is exempt from other inspections and inspection fees under this chapter, other than an inspection authorized under Section 755.025(g).

(c) An inspection agency shall notify the executive director in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.012, eff. Sept. 1, 2003.

Sec. 755.028. SPECIAL INSPECTIONS. The executive director may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.013, eff. Sept. 1, 2003.

Sec. 755.029. CERTIFICATE OF OPERATION. (a) The executive director shall issue to the owner or operator of a boiler a certificate of operation for the boiler if after a certificate

inspection:

(1) the boiler is found to be in a safe condition for operation; and

(2) the owner or operator has paid the fees assessed under Section 755.030.

(b) The certificate of operation is valid for not longer than the interval required for certificate inspections of that boiler.

(c) A certificate of operation must be posted under glass in a conspicuous place on or near the boiler for which it is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 231, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.014, eff. Sept. 1, 2003.

Sec. 755.030. FEES. (a) In addition to the fees described by Section 51.202, Occupations Code, the commission may authorize the collection of fees for:

(1) boiler inspections, including fees for special inspections; and

(2) other activities administered by the boiler inspection section and authorized by rule of the commission.

(b) The commission shall consider the advice of the board in setting the amount of a fee for:

(1) a boiler inspection, including a fee for a special inspection;

(2) a certificate of operation;

(3) the administration of an examination under this chapter; or

(4) any other activity administered by the boiler inspection section.

(c) The fees, travel, and per diem collected under this chapter may be appropriated only to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 474, Sec. 1, eff. June 11, 1991; Acts 2001, 77th Leg., ch. 836, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.807, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 5.007, eff. Sept. 1, 2003.

Sec. 755.032. RULES. (a) The commission may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

(b) The executive director may exchange information, including data on experience, with other authorities that inspect boilers or their appurtenances, to obtain information necessary to adopt rules.

(c) The executive director or a department employee may not prescribe the make, brand, or kind of boilers or any appurtenances on the boiler to purchase.

(d) The executive director or a department employee may not prescribe the make, brand, or kind of boilers to purchase.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.008, eff. Sept. 1, 2003.

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The executive director shall enter into interagency agreements with the Texas Department of Health, the Texas Commission on Fire Protection, and the Texas Department of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the executive director.

(b) The executive director may enter into analogous agreements with local fire marshals.

(c) The commission shall adopt rules relating to the terms and conditions of an interagency agreement entered into under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 233, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 8, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.009, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. ENFORCEMENT AND PENALTIES**

Sec. 755.041. REGULATION OF UNSAFE BOILERS. (a) If an inspection shows that a boiler is unsafe, the chief inspector or any

deputy inspector shall issue a written preliminary order requiring repairs and alterations as necessary to make the boiler safe for use. The inspector may also order discontinuing the use of the boiler until the repairs and alterations are made or the unsafe conditions are remedied.

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the executive director to show cause for not enforcing the preliminary order. If, after the hearing, the executive director determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the executive director may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(c) The chief inspector may issue a temporary certificate of operation for a period not to exceed 30 days pending the completion of the replacement or repairs.

(d) This section does not limit the executive director's authority under Section 755.028 or the commission's authority under Section 755.032.

(e) A boiler that cannot be made safe for use shall be condemned and the use of that boiler prohibited.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.010, eff. Sept. 1, 2003.

Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the executive director may petition a district court for an injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the executive director determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located or in Travis County. It is not necessary

for the prosecutor to verify the pleadings or for the state to execute a bond.

(b) The executive director's affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 234, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 26.015, eff. Sept. 1, 2003.

Sec. 755.043. GENERAL CRIMINAL PENALTY. (a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the commission, the executive director, or a regularly employed inspector authorized to enforce this chapter and rules and orders.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 235, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.011, eff. Sept. 1, 2003.

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the commission gives notice of the rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.012, eff. Sept. 1, 2003.

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the commission or the executive director and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

- (1) is issued under the seal of the commission or the executive director;
- (2) is executed by the commission, the executive director, the chief inspector, or a deputy inspector;
- (3) states the terms of the order;
- (4) states that the order was issued and published; and
- (5) states that the order was in effect during the period specified by the affidavit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.013, eff. Sept. 1, 2003.

**CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS  
SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES**

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY. (a) The owner or operator of a well or cistern that is at least 10 feet deep and not less than 10 inches nor more than six feet in diameter shall keep it entirely covered at all times except when the owner or operator is actually using the well or cistern.

(b) The cover required by this section must be capable of sustaining at least 200 pounds of weight.

(c) A person commits an offense if the person fails to cover a well or cistern as required by this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY. (a) A person who drills, digs, or otherwise creates or causes to be drilled, dug, or otherwise created a well or hole that is at least 10 feet deep and less than 10 inches in diameter may not abandon the hole unless the person first:

(1) completely fills the well or hole from its total depth to the surface; or

(2) plugs the well or hole with a permanent plug not less than 10 feet from the surface and completely fills the well or hole from the plug to the surface.

(b) A person commits an offense if the person abandons a well or hole in violation of this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. REFRIGERATORS AND OTHER CONTAINERS**

Sec. 756.011. TYPES OF REFRIGERATORS AND CONTAINERS COVERED.

This subchapter applies only to a refrigerator, ice box, or other airtight or semi-airtight container that has:

(1) a capacity of at least 1-1/2 cubic feet;

(2) an opening of at least 50 square inches; and

(3) a door or lid equipped with a latch or other fastening device capable of securing the door or lid shut.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.012. LEAVING REFRIGERATOR OR CONTAINER ACCESSIBLE TO CHILDREN. (a) A person may not place a container described by Section 756.011 outside of a structure or in a warehouse, storage room, or unoccupied or abandoned structure so that the container is accessible to children.

(b) A person may not permit a container described by Section 756.011 to remain in an area specified by Subsection (a) so that the container is accessible to children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 756.012.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$5 or more than \$200.



(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. TRENCH SAFETY**

Sec. 756.021. DEFINITION. In this subchapter, "trench" has the meaning assigned by the standards adopted by the Occupational Safety and Health Administration.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991.

Sec. 756.022. TRENCH EXCAVATION IN STATE. (a) The bid documents, if bids are used, and the contract for a construction project in this state on which a contractor is employed and that includes a trench excavation exceeding a depth of five feet must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety that will be in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the state or of a political subdivision in which the construction project is located, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the state or of any political subdivision in which the construction project is located must be based on the square feet of shoring used.

(c) A municipality may adopt an ordinance that requires the refusal of a building permit to a person who fails to certify in writing that the requirement of Subsection (a) has been satisfied. A municipality, in lieu of or in addition to the written certification, may require an applicant for a building permit to produce for

inspection or file with the municipality a copy of a contract that complies with Subsection (a) as a condition of issuance of a building permit.

(d) This section does not apply to a contract:

(1) governed by Section 756.023;

(2) governed by Subtitle D, Title 10, Government Code; or

(3) entered into by a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Redesignated from Health & Safety Code Sec. 756.021 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.31, eff. Sept. 1, 1999.

Sec. 756.023. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION. (a) On a project for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents provided to all bidders and the contract must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the political subdivision, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use by the contractor in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the political subdivision must be based on the square feet of shoring used.

(c) A political subdivision may require a bidder to attend a prebid conference to coordinate a geotechnical investigation of the project site by bidders. In awarding a contract, a political

subdivision may not consider a bid from a bidder who failed to attend a required prebid conference.

(d) This section does not apply to a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Redesignated from Health & Safety Code Sec. 756.022 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.32, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. OUTDOOR SHOOTING RANGES**

Sec. 756.041. DEFINITION. In this subchapter, "outdoor shooting range" means an outdoor shooting range, outdoor firing range, or other open property on which persons may fire a weapon for a fee or other remuneration but does not include a deer lease or other similar leases of property for the purpose of hunting or an archery range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.0411. APPLICABILITY. This subchapter applies only to an outdoor shooting range located in a county with a population of more than 150,000.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.042. CONSTRUCTION STANDARDS. The owner of an outdoor shooting range shall construct and maintain the range according to standards that are at least as stringent as the standards printed in the National Rifle Association range manual.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.043. CIVIL PENALTY. (a) The owner of an outdoor shooting range who fails to comply with Section 756.042 is liable within 60 days after a finding of noncompliance for a civil penalty

of \$50 for each day of noncompliance; the aggregate amount not to exceed \$500.

(b) The attorney general or the appropriate district attorney, criminal district attorney, or county attorney shall recover the civil penalty in a suit on behalf of the state. If the attorney general brings the suit, the penalty shall be deposited in the state treasury to the credit of the general revenue fund. If another attorney brings the suit, the penalty shall be deposited in the general fund of the county in which the violation occurred.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.044. CRIMINAL PENALTIES. (a) The owner of an outdoor shooting range commits an offense if the owner intentionally or recklessly fails to comply with Section 756.042 and that failure results in injury to another person.

(b) An offense under this section is a Class C misdemeanor, except that if it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.045. INSURANCE REQUIRED. (a) The owner of an outdoor shooting range shall purchase and maintain an insurance policy that provides coverage of at least \$500,000 for bodily injuries or death and another policy that provides that level of coverage for property damage resulting from firing any weapon while on the shooting range.

(b) The owner of an outdoor shooting range shall prominently display a sign at the shooting range stating that the owner has purchased insurance to cover bodily injury, death, or property damage occurring from activities at the shooting range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

#### **SUBCHAPTER E. PUBLICLY FUNDED PLAYGROUNDS**

Sec. 756.061. COMPLIANCE WITH SAFETY STANDARDS. (a) Notwithstanding any other rule or statute, and except as provided by

Subsection (b), on or after September 1, 2009, public funds may not be used:

(1) to purchase playground equipment that:

(A) does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use" published by ASTM International; or

(B) has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;

(2) to purchase surfacing for the area under and around playground equipment if the surfacing will not comply, on completion of installation of the surfacing, with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing" published by ASTM International; or

(3) to pay for installation of playground equipment or surfacing if the installation will not comply, on completion of the installation, with each applicable provision of the specifications described by Subdivision (1) or (2), as applicable.

(b) Public funds may be used for maintenance of playground equipment or surfacing for the area under and around playground equipment that was purchased before September 1, 2009, even if the equipment or surfacing does not comply, on completion of the maintenance, with each applicable provision of the specifications described by Subsections (a)(1) and (a)(2).

(c) This section:

(1) does not create, increase, decrease, or otherwise affect a person's liability for damages for injury, death, or other harm caused by playground equipment, surfacing, or the installation of the equipment or surfacing; and

(2) is not a waiver of sovereign immunity of any governmental entity.

Added by Acts 1995, 74th Leg., ch. 896, Sec. 1, eff. Aug. 28, 1995.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1009 (H.B. [4127](#)), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER F. SECURITY BARS**

Sec. 756.081. DEFINITIONS. In this chapter:

- (1) "Bedroom" means an area of a dwelling intended as sleeping quarters.
- (2) "Board" means the Texas Board of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Residential dwelling" includes a single-family home, a duplex, a triplex, an apartment, a motel or hotel, and a mobile home.
- (5) "Security bars" means burglar bars or other bars located on the inside or outside of a door or window of a residential dwelling.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.082. SECURITY BARS ON RESIDENTIAL DWELLING. A person may not install security bars on a door or window of a bedroom in a residential dwelling unless:

- (1) the security bars on at least one door or window in the bedroom have an interior release mechanism; or
- (2) at least one window or door from the bedroom to the exterior may be opened for emergency escape or rescue.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.083. LABELING REQUIREMENT. (a) Except as provided by Subsection (b), a person may not sell security bars or offer security bars for sale in this state unless the security bars or their packaging are labeled in accordance with rules adopted by the state fire marshal. The required label must state the requirements of Section 756.082.

(b) A person who is not regularly and actively engaged in business as a wholesale or retail dealer may sell or offer to sell security bars in this state provided that proper written notice of the requirements of Section 756.082 is provided to the buyer in a form approved by the state fire marshal.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.084. RECOMMENDED RELEASE MECHANISM. (a) The state fire marshal or a testing laboratory under conditions and procedures approved by the state fire marshal may recommend an interior release mechanism that has been shown to be effective.

(b) The state fire marshal shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES**

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

- (1) identify the problem requiring the need for providing municipal landscaping services;
- (2) identify the public health, safety, or welfare concern;
- (3) describe any reasonable actions previously taken to alleviate the problem; and
- (4) specify a period of definite duration necessary to address the problem.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.103. EXCEPTION. The limitations and requirements of this subchapter do not apply to a municipality in times of emergency, catastrophe, or other calamity.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

**SUBCHAPTER H. CONSTRUCTION AFFECTING PIPELINE EASEMENTS AND RIGHTS-  
OF-WAY**

Sec. 756.121. DEFINITIONS. In this subchapter:

(1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.

(2) "Constructor" means a person that builds, operates, repairs, replaces, or maintains a construction or causes a construction to be built, operated, repaired, maintained, or replaced.

(3) "Pipeline facility" means a pipeline used to transmit or distribute natural gas or to gather or transmit oil, gas, or the products of oil or gas.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.

Renumbered from Health and Safety Code, Section 756.101 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.122. APPLICABILITY. (a) This subchapter applies to a construction or the repair, replacement, or maintenance of a construction unless there is a written agreement, including a Texas Department of Transportation right-of-way agreement, to the contrary between the owner or operator of the affected pipeline facility and the person that places or causes a construction to be placed on the easement or right-of-way of a pipeline facility.

(b) This subchapter does not apply to:

(1) construction done by a municipality on property owned by the municipality, unless the construction is for private commercial use; or

(2) construction or repair, replacement, or maintenance of construction on property owned by a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.



Renumbered from Health and Safety Code, Section 756.102 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.123. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. A person may not build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given the operator of the pipeline facility and:

(1) the operator of the pipeline facility determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline facility;

(2) if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the reasonable, necessary, and documented cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the public or pipeline facility from that risk before proceeding with the construction;

(3) the building, repair, replacement, or maintenance is conducted under an existing written agreement; or

(4) the building, repair, replacement, or maintenance is required to be done promptly by a regulated utility company because of the effects of a natural disaster.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Renumbered from Health and Safety Code, Section 756.103 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.124. CIVIL LIABILITY. A constructor who violates this subchapter is liable to the owner or operator of a pipeline facility for damages to the facility proximately caused by the violation,

including any liability the owner or operator of the pipeline facility incurs as a result of the violation. This section does not affect the right of a surface owner to recover for any damages to the owner's property.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.125. INJUNCTIVE RELIEF. (a) A suit for injunctive relief to prevent or abate the violation of this subchapter may be brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) The court in which the suit is brought may grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility under the jurisdiction of the commission.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 19, eff. June 18, 2005.

Renumbered from Health and Safety Code, Section 756.106 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(49), eff. September 1, 2007.

#### **CHAPTER 757. POOL YARD ENCLOSURES**

Sec. 757.001. DEFINITIONS. In this chapter:

(1) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical

power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(2) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(3) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(4) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two doors are hinged and closable so that the edge of one door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one of the two doors.

(5) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after September 1, 1993, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(6)(A) "Keyless bolting device" means a door lock not in the doorknob that locks:

(i) with a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(ii) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three case-hardened screws at least three inches in length. One half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

(iii) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(B) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch.

(7) "Multiunit rental complex" means two or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium project. The term does not include:

(A) a facility primarily renting rooms to overnight guests; or

(B) a single-family home or adjacent single-family homes that are not part of a condominium project.

(8) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground, or indoors.

(9) "Pool yard" means an area that contains a pool.

(10) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(11) "Property owners association" means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.

(12) "Sliding door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(15) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(16) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.002. APPLICATION. This chapter applies only to:

- (1) a pool owned, controlled, or maintained by the owner of a multiunit rental complex or by a property owners association; and
- (2) doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or condominium, cooperative, or town home project.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.003. ENCLOSURE FOR POOL YARD. (a) Except as otherwise provided by Section 757.005, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(b) The height of the pool yard enclosure must be at least 48 inches as measured from the ground on the side away from the pool.

(c) Openings under the pool yard enclosure may not allow a sphere four inches in diameter to pass under the pool yard enclosure.

(d) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 45 inches, the openings may not allow

a sphere four inches in diameter to pass through the enclosure.

(e) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the openings may not allow a sphere 1-3/4 inches in diameter to pass through the enclosure.

(f) The use of chain link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after January 1, 1994. The use of diagonal fencing members that are lower than 49 inches above the ground is prohibited for a new pool yard enclosure that is constructed after January 1, 1994.

(g) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than 1-3/4 inches in any direction.

(h) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(i) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(j) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 757.006 and 757.007.

(k) The owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool is not required to:

(1) build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(2) conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.004. GATES. (a) Except as otherwise provided by Section 757.005, a gate in a fence or wall enclosing a pool yard as required by Section 757.003 must:

(1) have a self-closing and self-latching device;

(2) have hardware enabling it to be locked, at the option

of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(3) open outward away from the pool yard.

(b) Except as otherwise provided by Subsection (c) and Section 757.005, a gate latch must be installed so that it is at least 60 inches above the ground, except that it may be installed lower if:

(1) the latch is installed on the pool yard side of the gate only and is at least three inches below the top of the gate; and

(2) the gate or enclosure has no opening greater than one-half inch in any direction within 18 inches from the latch, including the space between the gate and the gate post to which the gate latches.

(c) A gate latch may be located 42 inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.005. EXISTING POOL YARD ENCLOSURES. (a) If a pool yard enclosure is constructed or modified before January 1, 1994, and no municipal ordinance containing standards for pool yard enclosures were applicable at the time of construction or modification, the enclosure must comply with the requirements of Sections 757.003 and 757.004, except that:

(1) if the enclosure is constructed with chain link metal fencing material, the openings in the enclosure may not allow a sphere 2-1/4 inches in diameter to pass through the enclosure; or

(2) if the enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 36 inches, the openings in the enclosure may not allow a sphere four inches in diameter to pass through the enclosure.

(b) If a pool yard enclosure is constructed or modified before January 1, 1994, and if the enclosure is in compliance with applicable municipal ordinances existing on January 1, 1994, and containing standards for pool yard enclosures, Sections 757.003, 757.004(a)(3), and 757.004(b) do not apply to the enclosure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.006. DOOR. (a) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after January 1, 1994.

(b) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for initial construction of the building or pool is before January 1, 1994, and the pool yard enclosure complies with Subsection (c), (d), or (e), as applicable.

(c) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

- (1) latch that automatically engages when the door is closed;
- (2) spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and
- (3) keyless bolting device that is installed not less than 36 inches or more than 48 inches above the interior floor.

(d) If French doors of a building open to the pool yard, one of the French doors must comply with Subsection (c)(1) and the other door must have:

- (1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or
- (2) a bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(e) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

- (1) a sliding door handle latch or sliding door security bar that is installed not more than 48 inches above the interior floor; and
- (2) a sliding door pin lock that is installed not more than 48 inches above the interior floor.

(f) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.



(g) A keyed dead bolt, keyless bolting device, sliding door pin lock, or sliding door security bar installed before September 1, 1993, may be installed not more than 54 inches from the floor.

(h) A keyed dead bolt or keyless dead bolt, as described by Section 757.001(6)(A)(i), installed in a dwelling on or after September 1, 1993, must have a bolt with a throw of not less than one inch.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.007. WINDOW AND WINDOW SCREENS. A wall of a building constructed before January 1, 1994, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after January 1, 1994, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.008. BUILDING IN POOL YARD. Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 757.006 and 757.007.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.009. INSPECTION, REPAIR, AND MAINTENANCE. (a) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair, and keep in good working order the pool yard enclosures, gates, and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to maintain, repair, and keep in good working order the window latches, sliding door handle latches, sliding door pin locks, and sliding door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement. A request or notice under this subsection may be given orally unless a written lease applicable to the tenant or written rules governing the property owners association require the request or notice to be in writing. The requirement in the lease or rules must be in capital letters and underlined or in 10-point boldfaced print.

(c) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every 31 days.

(d) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.010. COMPLIANCE WITH CHAPTER. (a) Except as provided by Subsection (b) and Section 757.011, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law, or any other law.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted by the Texas Board of Health under Section 757.011. A

tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(c) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on January 1, 1994.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.011. AUTHORITY OF TEXAS BOARD OF HEALTH. The Texas Board of Health may adopt rules requiring standards for design and construction of pool yard enclosures that exceed the requirements of this chapter and that apply to all pools and pool yards subject to this chapter. An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall comply with and shall be liable for failure to comply with those rules to the same extent as if they were part of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.012. ENFORCEMENT. (a) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(1) a court order directing the owner or property owners association to comply with this chapter;

(2) a judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(3) a judgment against the owner or property owners association for punitive damages resulting from the failure to comply with the requirements of this chapter if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious, or grossly negligent actions;

(4) a judgment against the owner or property owners association for actual damages, and if appropriate, punitive damages, where the owner or association was in compliance with this chapter at the time of the pool-related damaging event but was consciously indifferent to access being repeatedly gained to the pool yard by unauthorized persons; or

(5) a judgment against the owner or property owners association for a civil penalty of not more than \$5,000 if the owner or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association.

(b) A court may award reasonable attorney fees and costs to the prevailing party in an action brought under Subsection (a)(5).

(c) The attorney general, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and, after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.013. TENANT'S REQUEST FOR REPAIRS. A tenant in a multiunit rental complex with a pool may verbally request repair of a keyed dead bolt, keyless bolting device, sliding door latch, sliding door pin lock, sliding door security bar, window latch, or window screen latch unless a provision of a written lease executed by the tenant requires that the request be made in writing and the provision is in capital letters and underlined or in 10-point boldfaced print. A request for repair may be given to the owner or the owner's managing agent.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.014. APPLICATION TO OTHER BODIES OF WATER AND RELATED FACILITIES. The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners

association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.015. EFFECT ON OTHER LAWS. (a) The duties established by this chapter for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or town home project, and a property owners association supersede those established by common law, the Property Code, the Health and Safety Code, the Local Government Code other than Section 214.101, and local ordinances relating to duties to inspect, install, repair, or maintain:

- (1) pool yard enclosures;
- (2) pool yard enclosure gates and gate latches, including self-closing and self-latching devices;
- (3) keyed dead bolts, keyless bolting devices, sliding door handle latches, sliding door security bars, self-latching and self-closing devices, and sliding door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and
- (4) latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

(b) This chapter does not affect any duties of a rental dwelling owner, lessor, sublessor, management company, or managing agent under Subchapter D, Chapter 92, Property Code.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.016. NONEXCLUSIVE REMEDIES. The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.017. INTERPRETATION AND APPLICATION. The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

#### **CHAPTER 758. BICYCLE SAFETY**

Sec. 758.001. DEFINITIONS. In this chapter:

(1) "Bicycle" means a human-powered vehicle with two wheels in tandem designed to transport by a pedaling action of a person seated on a saddle seat.

(2) "Department" means the Department of Public Safety.

(3) "Operator" means a person who travels by pedaling on a bicycle seated on a saddle seat.

(4) "Other public right-of-way" means any right-of-way, other than a public roadway or public bicycle path, that is accessible by the public and designed for use by vehicular or pedestrian traffic.

(5) "Public bicycle path" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by bicycles or by bicycles and pedestrians.

(6) "Public roadway" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by motor vehicles.

(7) "Tricycle" means a three-wheeled human-powered vehicle that is designed to have a seat no more than two feet from the ground and be used as a toy by a child younger than six years of age.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994.  
Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.002. BICYCLE SAFETY EDUCATION PROGRAM. (a) The department may establish and administer a statewide bicycle safety education program and may adopt rules to implement the program. The program must include instruction concerning:

(1) the safe handling and use of bicycles;

- (2) high risk traffic situations;
- (3) bicycle and traffic handling skills;
- (4) on-bike training;
- (5) correct use of bicycle helmets; and
- (6) traffic laws and regulations.

(b) The department may issue a certificate or other evidence of completion to a person who has successfully completed a bicycle education course.

(c) Subject to the establishment of a bicycle education program by the department, a person born after December 31, 1985, who resides in a metropolitan statistical area as defined by the United States Office of Management and Budget may complete a bicycle education course approved by the department before operating a bicycle on a public roadway, public bicycle path, or other public right-of-way. The course may be completed before the person's 10th birthday.

(d) The department may charge a fee for the course not to exceed \$15.

(e) The department may:

- (1) determine the qualifications for an instructor in the bicycle education program;
- (2) use volunteer instructors; and
- (3) certify organizations to recruit and train instructors for the program.

(f) In administering this section, the department may contract with an educational institution, state agency, local government, or nonprofit organization interested in bicycle education.

(g) The department may accept gifts, grants, and donations to be used in administering this section.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994.  
Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.003. FUND. (a) A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the bicycle safety fund. The department by rule may establish a procedure to allow an educational institution, state agency, local government, or nonprofit organization interested in bicycle safety to retain an amount from the fees collected to cover

actual and necessary expenses.

(b) The fund may be used by the department only to:

- (1) defray the costs of administering this chapter;
- (2) provide a bicycle training course for a child younger than 10 years of age who comes from a low income family; and
- (3) if funding permits, assist children from low income families in purchasing bicycle helmets.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994.  
Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

#### **CHAPTER 759. ROLLER-SKATING CENTERS**

Sec. 759.001. DEFINITIONS. In this chapter:

- (1) "Operator" means a person who owns, controls, or has operational responsibility for a roller-skating center.
- (2) "Roller-skating center" means a facility or a portion of a facility that is specifically designed for roller skating by the public.
- (3) "Spectator" means an individual who is present in a roller-skating center only to observe skating activity, regardless of whether the skating activity is recreational or competitive.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.002. DUTIES OF OPERATOR. An operator shall:

- (1) provide at least one individual to act as a floor guard for approximately every 200 skaters;
- (2) require each floor guard to:
  - (A) wear attire that identifies the individual as a floor guard;
  - (B) be on duty at all times while skating is allowed;
  - (C) direct and supervise skaters and spectators; and
  - (D) watch for foreign objects that may have fallen on the floor;
- (3) inspect and maintain in good condition the roller-skating surface and the railings, kickboards, and walls surrounding



the roller-skating surface;

(4) inspect and maintain in good mechanical condition roller-skating equipment that the operator leases or rents to roller skaters;

(5) comply with the Roller-Skating Rink Safety Standards, 1980 edition, published by the Roller Skating Rink Operators Association of America;

(6) post the duties of roller skaters and spectators prescribed by this chapter in conspicuous places in the roller-skating center; and

(7) maintain the stability and legibility of all required signs, symbols, and posted notices.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.003. DUTIES OF ROLLER SKATERS. (a) A roller skater:

(1) shall comply with each posted sign or warning that relates to the behavior and responsibility of the roller skater in the roller-skating center;

(2) shall obey instructions given by the operator, floor guard, or other roller-skating center personnel;

(3) shall maintain reasonable control over the speed and direction of the roller skater's skating at all times;

(4) shall be reasonably aware of other roller skaters or objects in the roller-skating center to avoid colliding with other roller skaters or objects;

(5) shall know the roller skater's ability to control the intended direction of skating and shall skate within the limits of that ability; and

(6) may not act in a manner that may cause injury to others.

(b) The conduct of a child shall be evaluated based on the child's experience, intelligence, capacity, and age to determine if the child violated this section or Section 757.004.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the roller-skating center.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 757.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.005. LIABILITY. (a) The liability of an operator is limited to those injuries or damages proximately caused by a breach of the operator's duties prescribed by Section 757.002.

(b) The determination of the percentage of responsibility for an injury or damage shall be made according to Chapter 33, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Health & Safety Code Sec. 757.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

#### **CHAPTER 760. ICE SKATING CENTERS**

Sec. 760.001. DEFINITIONS. In this chapter:

(1) "Ice skating center" means that portion of a facility that is designed for ice skating by the public.

(2) "Operator" means a person who owns, controls, or has operational responsibility for an ice skating center.

(3) "Spectator" means an individual who is present in an ice skating center only to observe ice skating, regardless of whether the skating is recreational or competitive.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.002. DUTIES OF OPERATOR. An operator shall:

(1) provide at least one individual to act as a rink monitor for approximately every 200 ice skaters at any time public skating is allowed;

(2) require a rink monitor to:

(A) wear attire that identifies the individual as a rink monitor;

(B) direct and supervise skaters and spectators; and

(C) watch for and remove in a timely fashion all foreign objects that may have fallen on the ice skating surface;

(3) inspect and maintain in good condition the ice skating surface and the floors, railings, boards, and walls surrounding the ice skating surface;

(4) inspect and maintain in good mechanical condition ice skating equipment that the operator leases or rents to ice skaters;

(5) comply with the risk management guidelines for ice skating rinks endorsed by the board of directors of the Ice Skating Institute of America on August 27, 1996;

(6) post the duties of ice skaters and spectators prescribed by this chapter in conspicuous places in the ice skating center;

(7) maintain the stability and legibility of all required signs, symbols, and posted notices; and

(8) maintain liability insurance of at least \$500,000 combined single limits for personal injury, death, or property damage.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.003. DUTIES OF ICE SKATERS. (a) An ice skater shall:

(1) comply with each posted sign or warning that relates to the behavior and responsibility of the ice skater in the ice skating center;

(2) obey instructions given by the operator, rink monitor, or other ice skating center personnel;

(3) maintain reasonable control over the speed and direction of the ice skater's skating at all times;

(4) be reasonably aware of other ice skaters or objects in the ice skating center to avoid colliding with other ice skaters or objects; and

(5) know the ice skater's ability to control the intended direction of skating and skate within the limits of that ability.

(b) An ice skater may not act in a manner that may cause injury to others.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the ice skating center.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.005. DUTY OF CHILD. In determining whether the conduct of a child violates Section 760.003 or 760.004, the conduct shall be evaluated based on the child's experience, intelligence, capacity, and age.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.006. LIABILITY. (a) Except for actions against an operator for gross negligence, malice, or intentional conduct, an operator is not liable in negligence for damages for personal injury, property damage, or death unless the personal injury, property damage, or death is caused by a breach of a duty prescribed in Section 760.002.

(b) Chapter 33, Civil Practice and Remedies Code, applies to an action brought against an operator.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

#### **CHAPTER 765. CRIMINAL HISTORY RECORD INFORMATION CHECKS OF EMPLOYEES OF RESIDENTIAL DWELLING PROJECTS**

Sec. 765.001. DEFINITIONS. In this chapter:

- (1) "Department" means the Department of Public Safety.
- (2) "Dwelling" means one or more rooms rented for residential purposes to one or more tenants.
- (3) "Employer" means a person who employs employees to work at a residential dwelling project.
- (4) "Employee" means an individual who performs services for compensation at a residential dwelling project and who is employed by the entity that owns the project or represents the owner

in managing or leasing dwellings in the project. The term does not include an independent contractor.

(5) "Occupant" means an individual who resides in a dwelling in a residential dwelling project, other than:

- (A) a tenant of the dwelling; or
- (B) the owner or manager of the dwelling.

(6) "Residential dwelling project" means a house, condominium, apartment building, duplex, or similar facility that is used as a dwelling or a facility that provides lodging to guests for compensation including a hotel, motel, inn, bed and breakfast facility, or similar facility. The term does not include a nursing home or other related institution regulated under Chapter 242.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Human Resources Code Sec. 135.001 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.002. APPLICATION OF CHAPTER; EXCEPTION. (a) This chapter applies to each applicant for a position of employment in a residential dwelling project to whom an offer of employment is made and who, in the course and scope of the employment, may be reasonably required to have access to a dwelling in the residential dwelling project.

(b) This chapter does not apply to a person employed by an occupant or tenant of a dwelling in a residential dwelling project.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Human Resources Code Sec. 135.002 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.003. VERIFICATION OF CRIMINAL HISTORY RECORD INFORMATION. (a) An employer may request an applicant to disclose to the employer the applicant's criminal history at any time before or after an offer of employment is made to the applicant. After an offer of employment is made, the employer may verify through the department any criminal history record information that is maintained by the department relating to that applicant and that the department

is authorized to release under Chapter 411, Government Code. The employer may verify the information only with the authorization of the applicant and in compliance with this section.

(b) The department may adopt rules or apply rules adopted under Section 411.086, Government Code, regarding the method of requesting information under this chapter.

(c) The department may adopt rules relating to an employer's access to criminal history record information, including requirements for submission of:

(1) the employer's complete name, current street address, and federal employer identification number;

(2) an affidavit by an authorized representative of the employer that the individual whose criminal history is requested has been offered a position of employment by the employer in a residential dwelling project and that, in the course and scope of the employment, the individual may be reasonably required to have access to a dwelling in the residential dwelling project; and

(3) the complete name, date of birth, social security number, and current street address of the individual signing the affidavit.

(d) An affidavit submitted under Subsection (c) must include a statement, executed by the individual offered the position of employment, that authorizes the employer to obtain the criminal history record of the individual.

(e) The department may not provide an employer with the criminal history record information of an applicant under this chapter unless the employer is entitled to receive the information under Section 411.118, Government Code.

(f) This chapter does not require an employer to obtain criminal history record information under this chapter.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(57), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.003 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.004. PRIVILEGE. Criminal history record information received by an employer under this chapter is privileged and is for

the exclusive use of the employer. The employer may disclose the information to an authorized officer, employee, or agent of the employer only for the purpose of making a determination regarding the suitability of an individual for employment. Otherwise, an employer, or any individual to whom the employer may have disclosed information, may not release or otherwise disclose the information received under this chapter to any person or governmental entity except on court order or with the written consent of the individual being investigated.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.004 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.005. PENALTY. An individual who is an officer, employee, or agent of an employer and who knowingly or intentionally violates Section 765.004 or submits false information to the department commits an offense. An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.005 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.006. EFFECT OF SUBMISSION OF FALSE INFORMATION. An employer may terminate the employment of an individual who, at the time of the individual's application for employment or after the individual has been employed by the employer, submits false information relating to the individual's criminal history.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A, Human Resources Code Sec. 135.006 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.007. OTHER INFORMATION. This chapter does not prevent an employer from asking an applicant for employment or an employee to

provide other information if the request for that information is not otherwise prohibited by law.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993.  
Renumbered from Human Resources Code Sec. 135.007 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

#### **CHAPTER 766. FIRE SAFETY IN RESIDENTIAL DWELLINGS**

Sec. 766.001. DEFINITIONS. In this chapter:

(1) "Carbon monoxide alarm" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(2) "Department" means the Texas Department of Insurance.

(3) "Fossil fuel" includes coal, kerosene, oil, wood, fuel gases, and other petroleum or hydrocarbon products.

(4) "One-family or two-family dwelling" means a structure that has one or two residential units that are occupied as, or designed or intended for occupancy as, a residence by individuals.

(5) "Smoke detector" means a device or a listed component of a system that detects and sounds an alarm to indicate the presence of visible or invisible products of combustion in the air.

(6) "Smoke detector for hearing-impaired persons" has the meaning assigned by Section 792.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. [2118](#)), Sec. 10, eff. September 1, 2007.

Sec. 766.002. SMOKE DETECTOR REQUIREMENT. (a) Each one-family or two-family dwelling constructed in this state must have working smoke detectors installed in the dwelling in accordance with the smoke detector requirements of the building code in effect in the political subdivision in which the dwelling is located, including performance, location, and power source requirements.

(b) If a one-family or two-family dwelling does not comply with the smoke detector requirements of the building code in effect in the political subdivision in which the dwelling is located, any home improvement to the dwelling that requires the issuance of a building permit must include the installation of smoke detectors in accordance with the building code in effect in the political subdivision in



which the dwelling is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.0021. SMOKE DETECTOR FOR HEARING-IMPAIRED PERSONS.

(a) A purchaser under a written contract for the sale of a one-family or two-family dwelling may require the seller to install smoke detectors for hearing-impaired persons if:

(1) the purchaser or a member of the purchaser's family who will reside in the dwelling is a hearing-impaired person;

(2) the purchaser provides written evidence of the hearing impairment signed by a licensed physician; and

(3) not later than the 10th day after the effective date of the contract, the purchaser requests in writing that the seller install smoke detectors for hearing-impaired persons and specifies the locations in the dwelling where the smoke detectors are to be installed.

(b) If the seller is required to install smoke detectors for hearing-impaired persons under Subsection (a), the seller and purchaser may agree:

(1) which party will bear the cost of installing the smoke detectors; and

(2) which brand of smoke detectors to install.

(c) The seller must install the smoke detectors not later than the closing date of the sale of the dwelling.

(d) A purchaser may terminate the contract to purchase the dwelling if the seller fails to install smoke detectors for hearing-impaired persons as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.0025. FRATERNITY AND SORORITY HOUSES. (a) In this section, "fraternity or sorority house" means a dwelling that:

(1) is a separate structure and that is not a multiunit residential property composed of multiple independent residential units; and

(2) serves as living quarters for members of a fraternity or sorority.

(b) The owner of a fraternity or sorority house must have working smoke detectors installed in the fraternity house or sorority house in accordance with the smoke detector requirements of the building code in effect in the political subdivision in which the fraternity or sorority house is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.003. INFORMATION RELATING TO FIRE SAFETY AND CARBON MONOXIDE DANGERS. (a) The department shall prepare information of public interest relating to:

- (1) fire safety in the home; and
- (2) the dangers of carbon monoxide.

(b) The information must inform the public about:

- (1) ways to prevent fires in the home, and actions to take if a fire occurs in the home;
- (2) the need to test smoke detectors every month to ensure the smoke detector is working;
- (3) replacing the battery in a battery-operated smoke detector every six months;
- (4) the need to have fire safety equipment in the home, including fire extinguishers and emergency escape ladders;
- (5) the need to develop and practice a fire escape plan;
- (6) the availability of carbon monoxide detectors;
- (7) using carbon monoxide alarms as a backup to prevent carbon monoxide poisoning; and
- (8) the need to properly use and maintain fossil fuel-burning appliances.

(c) The department shall distribute the information described by this section to the public in any manner the department determines is cost-effective, including providing the information on the department's Internet website and publishing informational pamphlets.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

**CHAPTER 768. CHILDREN PARTICIPATING IN RODEOS**

Sec. 768.001. DEFINITIONS. In this chapter:

- (1) "Bull riding helmet" means a rodeo helmet that is designed to provide substantial protection for a person's head and face during bull riding.
- (2) "Child" means a person under 18 years of age.
- (3) "Department" means the Department of State Health Services.
- (4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (5) "Protective vest" means protective clothing that covers a person's chest and torso to prevent or mitigate injury to those areas.
- (6) "Rodeo" means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:
  - (A) riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider;
  - (B) riding a bull;
  - (C) roping an animal, including roping as part of a team;
  - (D) wrestling a steer; and
  - (E) riding a horse in a pattern around preset barrels or other obstacles.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. [2505](#)), Sec. 1, eff. June 19, 2009.

Sec. 768.002. PROTECTIVE GEAR REQUIRED FOR CHILDREN ENGAGING IN CERTAIN RODEO ACTIVITIES. (a) A child may not engage in, and a parent or legal guardian of the child may not knowingly or recklessly permit the child to engage in, bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a bull riding helmet and a protective vest.

(b) To satisfy the requirements of this section, a helmet or protective vest must meet the standards adopted under Section 768.004.

(c) In a cause of action in which damages are sought for injuries or death suffered by a child in connection with bull riding, the failure of the child or of the parent or legal guardian of the child to comply with this chapter does not constitute responsibility causing or contributing to the cause of the child's injuries or death for purposes of Chapter 33, Civil Practice and Remedies Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.003. RODEOS ASSOCIATED WITH SCHOOL. (a) This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children who attend the school are likely to participate.

(b) A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety, including the proper use of protective gear, for children planning to participate in the rodeo. The educational program may consist of an instructional video, subject to department approval.

(c) A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program under Subsection (b) not more than one year before the first day of the rodeo.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.004. RULES. (a) The executive commissioner by rule shall adopt standards for:

- (1) bull riding helmets; and
- (2) protective vests.

(b) For purposes of this section, the executive commissioner may adopt standards established under federal law or adopted by a federal agency or a nationally recognized organization.

(c) The executive commissioner shall adopt rules establishing requirements for the educational program under Section 768.003.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff.

June 19, 2009.

**SUBTITLE B. EMERGENCIES**

**CHAPTER 771. STATE ADMINISTRATION OF EMERGENCY COMMUNICATIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 771.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on State Emergency Communications.

(2) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(3) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, D, F, or G, Chapter 772.

(4) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 73.01, eff. September 28, 2011.

(5) "Local exchange service provider" means a telecommunications carrier providing telecommunications service in a local exchange service area under a certificate of public convenience and necessity issued by the Public Utility Commission of Texas.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(7) "Public agency" means the state, a municipality, a county, an emergency communication district, a regional planning commission, an appraisal district, or any other political subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services.

(8) "Public safety agency" means the division of a public agency that provides fire-fighting, police, medical, or other emergency services, or a private entity that provides emergency medical or ambulance services.

(9) "Public safety answering point" means a continuously operated communications facility that is assigned the responsibility

to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.

(10) "Regional planning commission" means a planning commission established under Chapter 391, Local Government Code.

(11) "Business service" means a telecommunications service classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

(12) "Wireless service provider" means a provider of commercial mobile service under Section 332(d), Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

(A) a service whose users do not have access to 9-1-1 service;

(B) a communication channel used only for data transmission;

(C) a wireless roaming service or other nonlocal radio access line service; or

(D) a private telecommunications service.

(13) "Wireless telecommunications connection" means any voice-capable wireless communication mobile station that is provided to a customer by a wireless service provider.

(14) "Service provider" means a local exchange service provider, a wireless service provider, and any other provider of local exchange access lines or equivalent local exchange access lines.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 735, Sec. 1, eff. June 16, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1246, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1406, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 2, eff. September 1, 2013.

#### **SUBCHAPTER B. COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

Sec. 771.031. COMPOSITION OF COMMISSION. (a) The Commission on State Emergency Communications is composed of nine appointed members and three ex officio members as provided by this section.

(b) The following individuals serve as nonvoting ex officio members:

(1) the executive director of the Public Utility Commission of Texas, or an individual designated by the executive director;

(2) the executive director of the Department of Information Resources, or an individual designated by the executive director; and

(3) the executive commissioner of the Health and Human Services Commission, or an individual designated by the executive commissioner.

(c) The lieutenant governor and the speaker of the house of representatives each shall appoint two members as representatives of the general public.

(d) The governor shall appoint:

(1) one member who serves on the governing body of a regional planning commission;

(2) one member who serves as a director of or is on the governing body of an emergency communication district;

(3) one member who serves on the governing body of a county;

(4) one member who serves on the governing body of a home-rule municipality that operates a 9-1-1 system that is independent of the state's system; and

(5) one member as a representative of the general public.

(e) Appointed members of the commission serve staggered terms of six years, with the terms of one-third of the members expiring

September 1 of each odd-numbered year.

(f) A vacancy in an appointed position on the commission shall be filled in the same manner as the position of the member whose departure created the vacancy.

(g) The governor shall designate an appointed member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 1, eff. September 1, 2009.

Sec. 771.0315. ELIGIBILITY FOR MEMBERSHIP OR TO BE GENERAL COUNSEL. (a) A person is not eligible for appointment under Section 771.031 to represent the general public if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of telecommunications;

(2) is employed by or participates in the management of a business entity or other organization receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the commission and may not be a



commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(3) the person is an officer, employee, or paid consultant of a Texas association of regional councils; or

(4) the person's spouse is an officer, manager, or paid consultant of a Texas association of regional councils.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.0316. GROUNDS FOR REMOVAL OF COMMISSION MEMBER. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 771.031;

(2) does not maintain during service the qualifications required by Section 771.031;

(3) is ineligible for membership under Section 771.031 or 771.0315;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote

of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.032. APPLICATION OF SUNSET ACT. The Commission on State Emergency Communications is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023.

Added by Acts 1995, 74th Leg., ch. 970, Sec. 2.01, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 1, eff. June 17, 2011.

Sec. 771.033. MEETINGS. The commission shall meet in Austin and at other places fixed by the commission at the call of the presiding officer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 6, eff. Sept. 1, 1999.

Sec. 771.034. EXPENSES. The expenses of a member of the commission shall be paid as provided by the General Appropriations

Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 7, eff. Sept. 1, 1999.

Sec. 771.035. STAFF; PERSONNEL POLICIES. (a) The commission may employ persons as necessary to carry out its functions.

(b) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(c) The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(d) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (c)(1); and

(3) filed with the governor's office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 8, eff. Sept. 1, 1999.

Sec. 771.036. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 9, eff. Sept. 1, 1999.

Sec. 771.037. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the commission;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission;
- (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget of the commission;
- (6) the results of the most recent formal audit of the commission;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether the attendance of the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 10, eff. Sept. 1, 1999.

Sec. 771.038. PUBLIC COMMENTS. The commission shall develop and implement policies that provide the public with a reasonable

opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 11, eff. Sept. 1, 1999.

Sec. 771.039. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 12, eff. Sept. 1, 1999.

Sec. 771.040. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute

resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 2, eff. June 17, 2011.

#### **SUBCHAPTER C. ADMINISTRATION OF STATE EMERGENCY COMMUNICATIONS**

Sec. 771.051. POWERS AND DUTIES OF COMMISSION. (a) The commission is the state's authority on emergency communications. The commission shall:

(1) administer the implementation of statewide 9-1-1 service and the poison control network, including poison control centers under Chapter 777;

(2) develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans under Section 771.055, including requirements that the plans provide for:

(A) automatic number identification by which the telephone number of the caller is automatically identified at the public safety answering point receiving the call; and

(B) other features the commission considers appropriate;

(3) examine and approve or disapprove regional plans as provided by Section 771.056;

(4) recommend minimum training standards, assist in training, and provide assistance in the establishment and operation of 9-1-1 service;

(5) allocate money to prepare and operate regional plans as provided by Section 771.056;

(6) develop and provide public education materials and training;

(7) plan, implement, operate, and maintain poison control center databases and assist in planning, supporting, and facilitating 9-1-1 databases, as needed;

(8) provide grants or contracts for services that enhance the effectiveness of 9-1-1 service;

(9) coordinate emergency communications services and providers;

(10) make reasonable efforts to gain voluntary cooperation in the commission's activities of emergency communications authorities and providers outside the commission's jurisdiction, including:

(A) making joint communications to state and federal regulators; and

(B) arranging cooperative purchases of equipment or services; and

(11) accept, receive, and deposit in its account in the general revenue fund gifts, grants, and royalties from public and private entities. Gifts, grants, and royalties may be used for the purposes of the commission.

(b) The commission shall comply with state laws requiring state agencies, boards, or commissions generally to submit appropriations requests to the Legislative Budget Board and the governor and to develop a strategic plan for operations.

(c) The commission may obtain a commercial license or sublicense to sell 9-1-1 or poison control public education and training materials in this state or in other states. The commission may use all profits from sales for purposes of the commission.

(d) The commission shall develop and implement policies that clearly separate the policy making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.05, eff. April 19, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 13, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. [1093](#)), Sec. 2, eff. September 1, 2009.

Sec. 771.0511. EMERGENCY SERVICES INTERNET PROTOCOL NETWORK;  
EMERGENCY COMMUNICATIONS ADVISORY COMMITTEE. (a) In this section:

(1) "Advisory committee" means the Emergency Communications Advisory Committee.

(2) "State-level emergency services Internet Protocol network" means a private Internet Protocol network or Virtual Private Network that:

(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and

(B) will be a part of the Texas Next Generation Emergency Communications System.

(b) The commission, with the assistance of an advisory committee, may coordinate the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network.

(c) If the commission acts under Subsection (b), the commission shall establish policy and oversee agency involvement in the development and implementation of the interconnected, state-level emergency services Internet Protocol network.

(d) If the commission acts under Subsection (b), the commission shall appoint an advisory committee. The advisory committee must include at least:

(1) one representative from a regional planning commission;

(2) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(A); and

(3) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(B).

(e) In appointing members of an advisory committee, the commission shall consult with regional planning commissions and emergency communication districts throughout the state. The commission shall ensure that each member of the advisory committee has appropriate training, experience, and knowledge in 9-1-1 systems and network management to assist in the implementation and operation of a complex network.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. [1861](#)), Sec. 3, eff.



June 17, 2011.

Sec. 771.0512. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 10, eff. September 1, 2013.

Sec. 771.052. AGENCY COOPERATION. Each public agency and regional planning commission shall cooperate with the commission to the fullest extent possible.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 14, eff. Sept. 1, 1999.

Sec. 771.053. STATEWIDE LIMITATION ON LIABILITY OF SERVICE PROVIDERS AND CERTAIN PUBLIC OFFICERS. (a) A service provider of communications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, a developer of software used in providing 9-1-1 service, a third party or other entity involved in providing 9-1-1 service, or an officer, director, or employee of the service provider, manufacturer, developer, third party, or other entity involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) A member of the commission or of the governing body of a public agency is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 15, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 3, eff. September 1, 2013.

Sec. 771.054. EFFECT OF CHAPTER ON EMERGENCY COMMUNICATION DISTRICTS. Except as expressly provided by this chapter, this chapter does not affect the existence or operation of an emergency communication district or prevent the addition of territory to the area served by an emergency communication district as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 771.055. STRATEGIC PLANNING. (a) Each regional planning commission shall develop a regional plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The 9-1-1 service must meet the standards established by the commission.

(b) A regional plan must describe how the 9-1-1 service is to be administered. The 9-1-1 service may be administered by an emergency communication district, municipality, or county, by a combination formed by interlocal contract, or by other appropriate means as determined by the regional planning commission. In a region

in which one or more emergency communication districts exist, a preference shall be given to administration by those districts and expansion of the area served by those districts.

(c) A regional plan must be updated at least once every state fiscal biennium and must include:

(1) a description of how money allocated to the region under this chapter is to be allocated in the region;

(2) projected financial operating information for the two state fiscal years following the submission of the plan; and

(3) strategic planning information for the five state fiscal years following submission of the plan.

(d) In a region in which one or more emergency communication districts exist, if a district chooses to participate in the regional plan, the district shall assist in the development of the regional plan.

(e) For each state fiscal biennium, the commission shall prepare a strategic plan for statewide 9-1-1 service for the following five state fiscal years using information from the strategic information contained in the regional plans and provided by emergency communication districts and home-rule municipalities that operate 9-1-1 systems independent of the state system. The commission shall present the strategic plan to the governor and the Legislative Budget Board, together with the commission's legislative appropriations request. The strategic plan must:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services throughout the whole state;

(2) provide an assessment of the progress made toward meeting the goals and objectives of the previous strategic plan and a summary of the total expenditures for emergency communications services in this state;

(3) provide a strategic direction for emergency communications services in this state;

(4) establish goals and objectives relating to emergency communications in this state;

(5) provide long-range policy guidelines for emergency communications in this state;

(6) identify major issues relating to improving emergency communications in this state;

(7) identify priorities for this state's emergency

communications system; and

(8) detail the financial performance of each regional planning commission in implementing emergency communications service including an accounting of administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 16, eff. Sept. 1, 1999.

Sec. 771.056. SUBMISSION OF REGIONAL PLAN TO COMMISSION. (a) The regional planning commission shall submit a regional plan, or an amendment to the plan, to the commission for approval or disapproval.

(b) In making its determination, the commission shall consider whether the plan or amendment satisfies the standards established by the commission under this chapter, the cost and effectiveness of the plan or amendment, and the appropriateness of the plan or amendment in the establishment of statewide 9-1-1 service.

(c) The commission shall notify a regional planning commission of the approval or disapproval of the plan or amendment not later than the 90th day after the date the commission receives an administratively complete plan or amendment. If the commission disapproves the plan, it shall specify the reasons for disapproval and set a deadline for submission of a modified plan.

(d) If the commission approves the plan, it shall allocate to the region from the money collected under Sections 771.071, 771.0711, and 771.072 and appropriated to the commission the amount that the commission considers appropriate to operate 9-1-1 service in the region according to the plan and contracts executed under Section 771.078.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 17, eff. Sept. 1, 1999.

Sec. 771.057. AMENDMENT OF PLAN. A regional plan may be amended according to the procedure determined by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 18, eff. Sept. 1, 1999.

Sec. 771.058. OPTIONAL PARTICIPATION IN PLAN. (a) In a county with a population of 120,000 or less, the county or another public agency, other than the state, located in the county is not required to participate in the regional plan applicable to the regional planning commission in which it is located, and the fee imposed under this chapter may not be charged to a customer in the county or territory of the public agency other than the county, unless the county or other public agency chooses to participate in the plan by resolution of its governing body.

(b) On approval by the commission, an emergency communication district may choose to participate in the regional plan applicable to the regional planning commission region in which the district is located. An emergency communication district described by Section 771.001(3)(A) may choose to participate in the regional plan by resolution of its governing body or by adoption of an ordinance. An emergency communication district described by Section 771.001(3)(B) may choose to participate in the regional plan by order of the district's board after a public hearing held in the manner required for a public hearing on the continuation of the district under the law governing the district. Following the adoption of the resolution, ordinance, or order and approval by the commission, the regional planning commission shall amend the regional plan to take into account the participation of the emergency communication district.

(c) Participation in the regional plan by an emergency communication district does not affect the organization or operation of the district, except that the district may not collect an emergency communication fee or other special fee for 9-1-1 service not permitted by this chapter. Participation by the district in the plan does not affect the district's authority to set its own fees in the territory under its jurisdiction on January 1, 1988. Participation in the regional plan by a public agency or group of public agencies operating as an emergency communication district as provided by Subsection (d) does not affect the authority of the public agency or group of public agencies to set its own fees in territory:

- (1) under its jurisdiction at the time of recognition; or
- (2) added to the district after the recognition.

(d) In a county with a population of 120,000 or less, a public agency or group of public agencies acting jointly that contracted

with a service provider before September 1, 1987, to provide 9-1-1 service by resolution of its governing body may withdraw from a regional plan in which it chooses to participate. A public agency or group of public agencies that withdraws from a regional plan under this subsection shall be recognized and operate as an emergency communication district in the agency's or group's geographic jurisdiction. As an emergency communication district, the public agency or group of agencies:

- (1) is governed by Subchapter D, Chapter 772; and
- (2) may collect all fees authorized by that subchapter or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 19, eff. Sept. 1, 1999.

Sec. 771.059. DEADLINE FOR STATEWIDE 9-1-1 SERVICE. Before September 1, 1995, all parts of the state must be covered by 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 771.060. BUSINESS PROVIDING RESIDENTIAL TELEPHONE SWITCHES. A business service user that provides residential facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is providing to other residential end users in the area participating in the regional plan under Section 771.051(2).

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 3, eff. Aug. 30, 1993.

Sec. 771.061. STATEWIDE CONFIDENTIALITY OF INFORMATION. (a) Information that a service provider of communications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service or that a service provider, third party, or other entity voluntarily furnishes at the

request of a governmental entity in providing 9-1-1 service is confidential and is not available for public inspection. Information that is contained in an address database maintained by a governmental entity or a third party used in providing 9-1-1 service is confidential and is not available for public inspection. The service provider or third party is not liable to any person who uses a 9-1-1 service for the release of information furnished by the service provider or third party in providing 9-1-1 service, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) Information that a service provider furnishes to the commission or an emergency communication district to verify or audit emergency service fees or surcharge remittances and that includes access line or market share information of an individual service provider is confidential and not available for public inspection.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 20, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 4, eff. September 1, 2013.

Sec. 771.062. LOCAL ADOPTION OF STATE RULE. (a) An emergency communication district may adopt any provision of this chapter or any commission rule. The commission may enforce a provision or rule adopted by an emergency communication district under this section.

(b) The commission shall maintain and update at least annually a list of provisions or rules that have been adopted by emergency communication districts under this section.

(c) An emergency communication district or home-rule municipality that operates a 9-1-1 system independent of the state system may voluntarily submit strategic planning information to the commission for use in preparing the strategic plan for statewide 9-1-

1 service. This information as determined by the commission, if reported, may:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services;

(2) detail the progress made toward meeting the goals and objectives of the previous strategic plan;

(3) describe the strategic direction, goals, and objectives for emergency communications services;

(4) identify major issues, long-range policy guidelines, and priorities relating to improving emergency communications services; and

(5) detail the financial performance of each district in implementing emergency communications services.

(d) The commission shall establish reasonable guidelines for use by districts and home-rule municipalities in preparing information for the strategic plan for statewide 9-1-1 services. These guidelines shall include the time frames of information and instructions for submission.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 21, eff. Sept. 1, 1999.

Sec. 771.063. DEFINITION OF LOCAL EXCHANGE ACCESS LINE AND EQUIVALENT LOCAL EXCHANGE ACCESS LINE. (a) The advisory commission shall determine by rulemaking what constitutes a local exchange access line and an equivalent local exchange access line for all 9-1-1 emergency services fees imposed statewide.

(b) By October 1, 1999, the advisory commission shall adopt definitions of a local exchange access line and an equivalent local exchange access line that exclude a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages.

(c) The advisory commission shall annually review the definitions of a local exchange access line and an equivalent local exchange access line to address technical and structural changes in



the provision of telecommunications and data services. In that annual review, the advisory commission may include previously excluded Internet service provider data modem lines if it determines that circumstances have changed sufficiently enough that 9-1-1 emergency calls through those lines are done on a regular basis or that the data lines are voice-capable or that the lines are functionally equivalent.

(d) An emergency communication district described by Section 771.001(3)(A) or (B) that has not participated in a regional plan shall use the advisory commission's definitions of a local exchange access line and an equivalent local exchange access line for purposes of imposing its emergency service fees and may not impose an emergency service fee on any line excluded from the advisory commission's definitions.

(e) A service provider shall collect and remit the emergency service fees to the advisory commission or the appropriate emergency communication district, as applicable, in accordance with the advisory commission's definition of a local exchange access line and an equivalent local exchange access line.

Added by Acts 1999, 76th Leg., ch. 1203, Sec. 1, eff. June 18, 1999.

#### **SUBCHAPTER D. FINANCING STATE EMERGENCY COMMUNICATIONS**

Sec. 771.071. EMERGENCY SERVICE FEE. (a) Except as otherwise provided by this subchapter, the commission may impose a 9-1-1 emergency service fee on each local exchange access line or equivalent local exchange access line, including lines of customers in an area served by an emergency communication district participating in the applicable regional plan. If a business service user provides residential facilities, each line that terminates at a residential unit, and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee may not be imposed on a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader. The fee may also not be imposed on any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063.

(b) The amount of the fee may not exceed 50 cents a month for

each line.

(c) The commission may set the fee in a different amount in each regional planning commission region based on the cost of providing 9-1-1 service to each region.

(d) The fee does not apply to an emergency communication district not participating in the applicable regional plan. A customer in an area served by an emergency communication district not participating in the regional plan may not be charged a fee under this section. Money collected under this section may not be allocated to an emergency communication district not participating in the applicable regional plan.

(e) A service provider shall collect the fees imposed on its customers under this section. Not later than the 30th day after the last day of the month in which the fees are collected, the service provider shall deliver the fees to the comptroller. The comptroller shall deposit money from the fees to the credit of the 9-1-1 services fee account in the general revenue fund. The comptroller may establish alternative dates for payment of fees under this section, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the fees are collected.

(f) The commission shall distribute money appropriated to the commission from the 9-1-1 services fee fund to regional planning commissions for use in providing 9-1-1 services as provided by contracts executed under Section 771.078. The regional planning commissions shall distribute the money to public agencies for use in providing those services.

(g) Repealed by Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999, Acts 1999, 76th Leg., ch. 1203, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 22, eff. Sept; 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 80, eff. Jan. 1, 2002.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.03, eff. September 28, 2011.

Sec. 771.0711. EMERGENCY SERVICE FEE FOR WIRELESS TELECOMMUNICATIONS CONNECTIONS. (a) To provide for automatic number identification and automatic location identification of wireless 9-1-1 calls, the commission shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee. A political subdivision may not impose another fee on a wireless service provider or subscriber for 9-1-1 emergency service.

(b) A wireless service provider shall collect the fee in an amount equal to 50 cents a month for each wireless telecommunications connection from its subscribers and shall pay the money collected to the comptroller not later than the 30th day after the last day of the month during which the fees were collected. The comptroller may establish alternative dates for payment of fees under this section. The wireless service provider may retain an administrative fee of one percent of the amount collected. The comptroller shall deposit the money from the fees to the credit of the 9-1-1 services fee account. Until deposited to the credit of the 9-1-1 services fee account as required by Subsection (c), money the comptroller collects under this subsection remains in a trust fund with the state treasury.

(c) Money collected under Subsection (b) may be used only for services related to 9-1-1 services, including automatic number identification and automatic location information services, or as authorized by Section 771.079(c). Not later than the 15th day after the end of the month in which the money is collected, the commission shall distribute to each emergency communication district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population of the area served by the district bears to the population of the state. The remaining money collected under Subsection (b) shall be deposited to the 9-1-1 services fee account.

(d) A service provider of telecommunications service involved in providing wireless 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(e) A member of the commission, the governing body of a public agency, or the Department of Information Resources is not liable for

any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(f) A wireless service provider is not required to take legal action to enforce the collection of any wireless 9-1-1 service fee. The comptroller may establish collection procedures and recover the cost of collection from the subscriber liable for the fee. The comptroller may institute legal proceedings to collect a fee and in those proceedings is entitled to recover from the subscriber court costs, attorney's fees, and interest on the amount delinquent.

(g) On receipt of an invoice from a wireless service provider for reasonable expenses for network facilities, including equipment, installation, maintenance, and associated implementation costs, the commission or an emergency services district of a home-rule municipality or an emergency communication district created under Chapter 772 shall reimburse the wireless service provider in accordance with state law for all expenses related to 9-1-1 service.

(h) Information that a wireless service provider is required to furnish to a governmental entity in providing 9-1-1 service is confidential and exempt from disclosure under Chapter 552, Government Code. The wireless service provider is not liable to any person who uses a 9-1-1 service created under this subchapter for the release of information furnished by the wireless service provider in providing 9-1-1 service. Information that is confidential under this section may be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific information may be extrapolated.

(i) Nothing in this section may be construed to apply to wireline 9-1-1 service.

(j) Nothing in this section precludes funds collected under Section 771.072 (Equalization Surcharge) from being used to cover costs under Subsection (g), as necessary and appropriate, including for rural areas that may need additional funds for wireless 9-1-1.

Added by Acts 1997, 75th Leg., ch. 1246, Sec. 2, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 81, eff. Jan. 1, 2002.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.07, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 6, eff. June 14, 2013.

Sec. 771.0712. PREPAID 9-1-1 EMERGENCY SERVICE FEE. (a) To ensure that all 9-1-1 agencies under Section 418.051, Government Code, are adequately funded, beginning on June 1, 2010, a prepaid wireless 9-1-1 emergency services fee of two percent of the purchase price of each prepaid wireless telecommunications service purchased by any method, shall be collected by the seller from the consumer at the time of each retail transaction of prepaid wireless telecommunications service occurring in this state and remitted to the comptroller consistent with Chapter 151, Tax Code, and distributed consistent with the procedures in place for the emergency services fee in Section 771.0711, Health and Safety Code. A seller may deduct and retain two percent of prepaid wireless 9-1-1 emergency services fees that it collects under this section to offset its costs in administering this fee.

(b) The comptroller shall adopt rules to implement this section by June 1, 2010.

(c) A seller who fails to file a report or remit a fee collected or payable as provided by this section and comptroller rules shall pay five percent of the amount due and payable as a penalty, and if the seller fails to file the report or remit the fee within 30 days after the day the fee or report is due, the seller shall pay an additional five percent of the amount due and payable as an additional penalty.

(d) In addition to any other penalty authorized by this section, a seller who fails to file a report as provided by this section shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the seller subsequently files the report or whether any taxes were due from the seller for the reporting period under the required report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03a, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 14.10, eff. October 1, 2011.

Sec. 771.072. EQUALIZATION SURCHARGE. (a) In addition to the fees imposed under Sections 771.071 and 771.0711, the commission shall impose a 9-1-1 equalization surcharge on each local exchange access line or equivalent local exchange access line and each wireless telecommunications connection. The surcharge may not be imposed on:

(1) a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader;

(2) any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063; or

(3) any wireless telecommunications connection that constitutes prepaid wireless telecommunications service subject to Section 771.0712.

(b) The surcharge must be a fixed amount, not to exceed 10 cents per month for each local exchange access line, equivalent local exchange access line, or wireless telecommunications connection.

(c) Except as provided by Section 771.073(f), each service provider shall collect the surcharge imposed on its customers under this section and shall deliver the surcharges to the comptroller not later than the date specified by the comptroller, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the surcharge is collected. If the comptroller does not specify a date, the provider shall deliver the surcharges to the comptroller not later than the 30th day after the last day of the month in which the surcharges are collected.

(d) From the revenue received from the surcharge imposed under this section, not more than 40 percent of the amount derived from the application of the surcharge shall be allocated to regional planning commissions or other public agencies designated by the regional planning commissions for use in carrying out the regional plans provided for by this chapter. The allocations to the regional planning commissions are not required to be equal, but should be made to carry out the policy of this chapter to implement 9-1-1 service statewide. Money collected under this section may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

(e) From the revenue received from the surcharge imposed by this section, not more than 60 percent of the amount derived from the application of the surcharge shall be periodically allocated to fund

grants awarded under Section 777.009 and other activities related to the poison control centers as required by Chapter 777.

(f) The comptroller shall deposit the surcharges and any prior balances in accounts in the general revenue fund in the state treasury until they are allocated to regional planning commissions, other 9-1-1 jurisdictions, and regional poison control centers in accordance with this section. From those accounts, the amount necessary for the commission to fund approved plans of regional planning commissions and regional poison control centers and to carry out its duties under this chapter shall be appropriated to the commission. Section 403.095, Government Code, does not apply to an account established by this subsection.

(g) Notwithstanding any other law, revenue derived from the equalization surcharge imposed under this section may be appropriated to the commission only for the purposes described by Sections 773.122 through 773.124.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.06, eff. Aug. 31, 1994; Acts 1993, 73rd Leg., ch. 670, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1045, Sec. 15, eff. June 18, 1999, Acts 1999, 76th Leg., ch. 1405, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 82, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.04, eff. September 28, 2011.

Sec. 771.0725. ESTABLISHMENT OF RATES FOR FEES. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(e) The commission shall establish the rate for the equalization surcharge imposed under Section 771.072 for each state fiscal biennium in an amount that ensures the aggregate of the anticipated surcharges collected from all customers for the following 12 months does not exceed the aggregate of the surcharges collected from all customers during the preceding 12 months. Any change in the equalization surcharge rate may not become effective before the 90th day after the date notice of the change is provided by the commission to the service providers.

Added by Acts 1997, 75th Leg., ch. 1241, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.33, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 25, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.05, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 448 (S.B. 809), Sec. 1, eff. September 1, 2013.

Sec. 771.073. COLLECTION OF FEES AND SURCHARGES. (a) A customer on which a fee or surcharge is imposed under this subchapter is liable for the fee or surcharge in the same manner as the customer is liable for the charges for services provided by the service provider. The service provider shall collect the fees and surcharges in the same manner it collects those charges for service, except that the service provider is not required to take legal action to enforce the collection of the fees or surcharges. Other than the fee imposed under Section 771.0712, a fee or surcharge imposed under this subchapter must be either stated separately on the customer's bill or combined in an appropriately labeled single line item on the customer's bill with all other fees and surcharges that are imposed under this subchapter or that are imposed for 9-1-1 emergency service by a political subdivision. A service provider that combines the fees and surcharges into a single line item for billing purposes must maintain books and records reflecting the collection of each separate fee and surcharge.

(b) A business service user that provides residential facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall collect the 9-



1-1 emergency service fee and transmit the fees monthly to the comptroller. A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action. A court may award to the comptroller court costs, attorney's fees, and interest on the amount delinquent, to be paid by the nonpaying business service user. A certificate of the comptroller specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(c) The comptroller may establish collection procedures and recover the cost of collection from the customer liable for the fee or surcharge. The comptroller may institute legal proceedings to collect a fee or surcharge and in those proceedings is entitled to recover from the customer court costs, attorney's fees, and an interest on the amount delinquent.

(d) A service provider may not disconnect services for nonpayment of a fee or surcharge imposed under this subchapter.

(e) A service provider collecting fees or surcharges under this subchapter may retain as an administrative fee an amount equal to one percent of the total amount collected.

(f) The commission may establish payment schedules and minimum payment thresholds for fees and surcharges imposed under this subchapter.

(g) A 9-1-1 service provider is responsible for correctly billing and remitting applicable 9-1-1 fees, charges, and equalization surcharges. Any 9-1-1 fees, charges, or equalization surcharges erroneously billed to a subscriber by a 9-1-1 service provider and erroneously remitted to the commission or an emergency communication district may not be recovered from the commission or emergency communication district unless the fees or charges were adjusted due to a refund to the subscriber by the local exchange carrier or interexchange carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 83, eff. Jan. 1, 2002.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.06, eff. September 28, 2011.

Sec. 771.0735. SOURCING OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES. The federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) governs the sourcing of charges for mobile telecommunications services. In accordance with that Act:

(1) mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider;

(2) all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider in accordance with the Act are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services; and

(3) the fee and the surcharge imposed on wireless telecommunications bills shall be administered in accordance with Section 151.061, Tax Code.

Added by Acts 2001, 77th Leg., ch. 370, Sec. 4, eff. Aug. 1, 2002.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.07, eff. September 28, 2011.

Sec. 771.074. EXEMPTION. A fee or surcharge authorized by this subchapter, Chapter 772, or a home-rule municipality may not be imposed on or collected from the state or the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1377, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 84, eff. Jan. 1, 2002.

Sec. 771.075. USE OF REVENUE. Except as provided by Section

771.0751, 771.072(e), 771.072(f), or 771.073(e), fees and surcharges collected under this subchapter may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 27, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 258, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1324, Sec. 1, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 1324, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 258, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under this subchapter in the county that has the highest population within a region subject to this subchapter.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

- (1) designing a 9-1-1 system; or
- (2) obtaining and maintaining equipment and personnel necessary to establish and operate:
  - (A) a public safety answering point and related operations; or
  - (B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 258, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This

section applies only to the use of fees and surcharges collected under this subchapter in a county subject to this subchapter with a population of at least one million.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

- (1) designing a 9-1-1 system; or
- (2) obtaining and maintaining equipment and personnel necessary to establish and operate:
  - (A) a public safety answering point and related operations; or
  - (B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 258, Sec. 2, eff. June 18, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 50, eff. September 1, 2011.

Sec. 771.076. AUDITS. (a) The commission or an employee of the commission may notify the comptroller of any irregularity that may indicate that an audit of a service provider collecting a fee or surcharge under this subchapter is warranted. The comptroller also may audit a service provider at the comptroller's discretion, without first receiving a notification from the commission or an employee of the commission. The cost of the audit shall not be assessed against the service provider. The commission may require at its own expense that an audit be conducted of a public agency receiving money under this chapter.

(b) If the comptroller conducts an audit of a service provider that collects and disburses fees or surcharges under this subchapter, the comptroller shall also audit those collections and disbursements to determine if the provider is complying with this chapter.

(c) At the request of the Public Utility Commission of Texas, the state auditor may audit a regional planning commission or other public agency designated by the regional planning commission that receives money under this subchapter.

(d) The audit of a public agency under Subsection (a) or (c) must be limited to the collection, remittance, and expenditure of

money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1241, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 28, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 85, eff. Jan. 1, 2002.

Sec. 771.077. COLLECTION OF FEES AND SURCHARGES. (a) The comptroller may establish collection procedures to collect past due amounts and may recover the costs of collection from a service provider or business service user that fails to timely deliver the fees and the equalization surcharge to the comptroller. Subtitles A and B, Title 2, Tax Code, apply to the administration and collection of amounts by the comptroller under this subchapter.

(b) The comptroller may establish procedures to be used by the commission to notify the comptroller of a service provider's or business service user's failure to timely deliver the fees or surcharges.

(c) The comptroller shall deposit amounts received as costs of collection in the general revenue fund.

(d) The comptroller shall:

(1) remit to the commission money collected under this section for fees provided by Section 771.0711 and associated late penalties;

(2) deposit to the 9-1-1 services fee account any money collected under this section for fees provided by Section 771.071 and associated late penalties; and

(3) deposit to the account as authorized by Section 771.072 any money collected under this section for fees provided by Section 771.072 and associated late penalties.

(e) The commission shall:

(1) deposit or distribute the money remitted under Subsection (d)(1) as Section 771.0711 provides for fees received under that section; and

(2) distribute the money remitted under Subsection (d)(2) and appropriated to the commission under contracts as provided by Section 771.078(b)(1).

Added by Acts 1995, 74th Leg., ch. 638, Sec. 7, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 29, eff. Sept. 1,

1999; Acts 2001, 77th Leg., ch. 1158, Sec. 86, eff. Jan. 1, 2002.

Sec. 771.078. CONTRACTS FOR SERVICES. (a) The commission shall contract with regional planning commissions for the provision of 9-1-1 service. The commission by rule shall adopt standard provisions for the contracts.

(b) In making contracts under this section, the commission shall ensure that each regional planning commission receives money for 9-1-1 service in two separately computed amounts as provided by this subsection. The commission must provide each regional planning commission with:

(1) an amount of money equal to the total of the revenue from the emergency service fees collected under Section 771.071 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the amount of those fees collected from the region and the denominator of which is the total amount of those fees collected in this state; and

(2) an amount of money equal to the total of the revenue from the emergency service fee for wireless telecommunications connections under Section 771.0711 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of this state.

(c) Contracts under this section must provide for:

(1) the reporting of financial information regarding administrative expenses by regional planning commissions in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in each regional planning commission's service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of answering points and the creation of new answering points;

(5) quarterly disbursements of money due under the contract, except as provided by Subdivision (6);

(6) the commission to withhold disbursement to a regional planning commission that does not follow a standard imposed by the

contract, a commission rule, or a statute; and

(7) a means for the commission to give an advance on a quarterly distribution under the contract to a regional planning commission that has a financial emergency.

(d) Not more than 10 percent of the money received by a regional planning commission under Subsection (b) may be used for the regional planning commission's indirect costs. In this subsection, "indirect costs" means costs that are not directly attributable to a single action of a commission. The governor shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering this section.

(e) The commission may allocate surcharges under Section 771.072(d) by means of a contract under this section.

(f) Promptly after the commission receives a request from a regional planning commission, the commission shall provide the regional planning commission with adequate documentation and financial records of the amount of money collected in that region or of an amount of money allocated to the regional planning commission in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 30, eff. Sept. 1, 1999.

Sec. 771.079. 9-1-1 SERVICES FEE FUND. (a) The 9-1-1 services fee fund is an account in the general revenue fund.

(b) The account consists of:

(1) fees deposited in the fund as provided by Sections 771.071 and 771.0711; and

(2) notwithstanding Section 404.071, Government Code, all interest attributable to money held in the account.

(c) Except as provided by Subsection (c-1), money in the account may be appropriated only to the commission for planning, development, provision, or enhancement of the effectiveness of 9-1-1 service or for contracts with regional planning commissions for 9-1-1 service, including for the purposes of:

(1) maintaining 9-1-1 service levels while providing for a transition to a system capable of addressing newer technologies and capable of addressing other needs;

(2) planning and deploying statewide, regional, and local

emergency network systems; and

(3) updating geospatial mapping technologies.

(c-1) The legislature may appropriate money from the account to provide assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, only if:

(1) the purposes described by Subsection (c) have been accomplished or are fully funded for the fiscal period for which an appropriation under this subsection is made; and

(2) all other sources of revenue dedicated for the purposes of providing assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, are obligated for the fiscal period for which an appropriation under this subsection is made.

(d) Section 403.095, Government Code, does not apply to the account.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 31, eff. Sept. 1, 1999.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 7, eff. June 14, 2013.

#### **SUBCHAPTER E. EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS**

Sec. 771.101. DEFINITION. In this subchapter, "center" means the area health education center at The University of Texas Medical Branch at Galveston that meets the requirements of 42 U.S.C. Section 294a and has received federal funding as an area health education center.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Sec. 771.102. ESTABLISHMENT OF THE EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS PROGRAM. (a) The center, with the assistance of the advisory council appointed under Section 773.012, shall establish a program to use emergency medical dispatchers located in regional emergency medical dispatch resource centers to provide life-saving and other emergency medical instructions to persons who need guidance



while awaiting the arrival of emergency medical personnel. The purpose of a regional emergency medical dispatch resource center is not to dispatch personnel or equipment resources but to serve as a resource to provide pre-arrival instructions that may be accessed by selected public safety answering points that are not adequately staffed or funded to provide those services.

(b) The commission shall provide technical assistance to the center to facilitate the implementation of the project.

(c) The center, with the assistance of the advisory council, shall:

- (1) design criteria and protocols and provide oversight as needed to conduct the program;
- (2) collect the necessary data to evaluate the program; and
- (3) report its findings to the legislature.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 1, eff. September 1, 2007.

Sec. 771.103. PARTICIPATION IN PROGRAM. (a) The center shall determine which public safety answering points are interested in participating in the program.

(b) Participating public safety answering points must agree to participate in any required training and to provide regular reports required by the center for the program.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 2, eff. September 1, 2007.

Sec. 771.104. SELECTION OF PROGRAM PARTICIPANTS AND REGIONAL

EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS. (a) The center, with the assistance of the advisory council, may select public safety answering points to participate in the program or to serve as regional emergency medical dispatch resource centers. A public safety answering point may participate in the program and serve as a regional emergency medical dispatch resource center. A public safety answering point selected for the program or to serve as a resource center must:

(1) have a fully functional quality assurance program that measures each emergency medical dispatcher's compliance with the medical protocol;

(2) have dispatch personnel who meet the requirements for emergency medical dispatcher certification or the equivalent as determined by the Department of State Health Services;

(3) use emergency medical dispatch protocols approved by a physician medical director knowledgeable in emergency medical dispatch;

(4) have sufficient experience in providing pre-arrival instructions; and

(5) have sufficient resources to handle the additional workload and responsibilities of the program.

(b) In selecting an existing public safety answering point to act as a resource center, the center shall consider a public safety answering point's ability to keep records and produce reports to measure the effectiveness of the program. The center shall share information regarding a public safety answering point's abilities with the advisory council.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 3, eff. September 1, 2007.

Sec. 771.105. CRITERIA FOR EMERGENCY MEDICAL DISPATCH INTERVENTION. The center, with the assistance of the advisory council, shall define criteria that establish the need for emergency

medical dispatch intervention to be used by participating public safety answering points to determine which calls are to be transferred to the regional emergency medical dispatch resource center for emergency medical dispatch intervention.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Sec. 771.106. FUNDING OF PROGRAM. (a) Money in the 9-1-1 services fee fund and other state funds may be appropriated to The University of Texas Medical Branch at Galveston on behalf of the center to fund the program.

(b) The University of Texas Medical Branch at Galveston on behalf of the center and the center are also authorized to seek grant funding for the program.

(c) A political subdivision that participates in the program may pay an appropriate share of the cost of the program.

(d) The provisions in this subchapter that require the center to establish, conduct, and evaluate the program are contingent on the center receiving funding in accordance with this section. If a sufficient number of political subdivisions in a region that could be served by a program offer to pay the center an amount that in the aggregate, together with any other funding received under this section, is sufficient to fund the program for the region, The University of Texas Medical Branch at Galveston, on behalf of the center:

(1) shall enter into contracts with the offering political subdivisions under which each will pay an appropriate share of the cost; and

(2) when the amount under the signed contracts, together with any other funding received under this section, is sufficient to fund the program for the region, shall implement the program for the region.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 1, eff. May 27, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 4, eff. September 1, 2007.

Sec. 771.107. REPORT TO LEGISLATURE. The center shall biennially report its findings to the governor, the presiding officer of each house of the legislature, and the advisory council no later than January 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 2, eff. May 27, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 5, eff. September 1, 2007.

Sec. 771.108. LIABILITY. The operations of the regional emergency medical dispatch resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Sec. 771.109. WORK GROUP. (a) The center may appoint a program work group to assist the center in developing, implementing, and evaluating the program and preparing a report on the center's findings.

(b) A member of the work group receives no additional

compensation for serving on the program work group and may not be reimbursed for travel or other expenses incurred while conducting the business of the program work group.

(c) The program work group is not subject to Chapter 2110, Government Code.

Added by Acts 2003, 78th Leg., ch. 167, Sec. 3, eff. May 27, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 6, eff. September 1, 2007.

**CHAPTER 772. LOCAL ADMINISTRATION OF EMERGENCY COMMUNICATIONS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 772.001. DEFINITIONS. In this chapter:

(1) "Automatic location identification" means a feature corresponding to automatic number identification by which the number provided by the automatic number identification feature is matched with the address or location of the telephone from which the call is made and is presented to the public safety answering point along with the number in a computerized 9-1-1 system.

(2) "Automatic number identification" means a feature that enables a service supplier to identify the telephone number of a caller and that operates by forwarding the caller's telephone number to the public safety answering point, where the data is received by equipment that translates it into a visual display.

(3) "Base rate" means the rate or rates billed by a service supplier, as stated in the service supplier's charges approved by the appropriate regulatory authority, that represent the service supplier's recurring charges for local exchange access lines or their equivalent, exclusive of all taxes, fees, license costs, or similar charges.

(4) "Dispatch method" means the method of responding to a telephone request for emergency service by which a public safety answering point decides on the proper action to be taken and dispatches, when necessary, the appropriate emergency service unit.

(5) "Local exchange access lines" means all types of lines or trunks that connect a service user to the service supplier's local

telephone exchange office.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(7) "9-1-1 system" means a system of processing emergency 9-1-1 calls.

(8) "Participating jurisdiction" means a public agency that by vote consents to receive 9-1-1 service from an emergency communication district.

(9) "Principal service supplier" means the entity that provides the most central office lines to an emergency communication district.

(10) "Private safety entity" means a private entity that provides emergency fire-fighting, ambulance, or medical services.

(11) "Public agency" means a municipality or county in this state that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(12) "Public safety agency" means the division of a public agency that provides fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(13) "Public safety answering point" means a communications facility that:

(A) is operated continuously;

(B) is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch emergency response services directly or to transfer or relay emergency 9-1-1 calls to other public safety agencies;

(C) is the first point of reception by a public safety agency of a 9-1-1 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(14) "Relay method" means the method of responding to a telephone request for emergency service by which a public safety answering point notes pertinent information and relays that information to the appropriate public safety agency or other provider of emergency services for appropriate action.

(15) "Selective routing" means the feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the answering point serving the place from which the call originates.

(16) "Service supplier" means an entity providing local exchange access lines to a service user in an emergency communication district.

(17) "Service user" means a person that is provided local exchange access lines, or their equivalent, in an emergency communication district.

(18) "Transfer method" means the method of responding to a telephone request for emergency service by which a public safety answering point transfers the call directly to the appropriate public safety agency or other provider of emergency services for appropriate action.

(19) "Data base" means the information stored in a management system that is a system of manual procedures and computer programs used to create, store, and update the data required for the selective routing and automatic location identification features in the provision of computerized 9-1-1 service.

(20) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(21) "Business service" means a telecommunications service classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 5, eff. September 1, 2013.

Sec. 772.002. INFORMATION RELATING TO COLLECTION AND REMITTANCE OF 9-1-1 EMERGENCY SERVICE FEE. (a) This section applies only to a district created under this chapter that collects a 9-1-1 emergency service fee from a service supplier or business service user. This section does not apply to an incumbent local exchange company as defined in Section 51.002, Utilities Code.

(b) The board of managers of a district by order may require a

service supplier or business service user to provide to the district any information the board requires so long as that information and the format requested are readily available for the service provider's records to determine whether the service provider or business service user is correctly billing and collecting the 9-1-1 emergency service fee and remitting the fee to the district. The information required from a service provider under this subsection may include:

(1) the number of local exchange access lines that the service provider has in the district; and

(2) the number of those local exchange access lines that the Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063.

(c) The district shall maintain the confidentiality of information provided under this section that a service provider or business service user claims is confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(d) The district may bring suit to enforce this section or to collect fees billed and collected by a service provider or business service user but not remitted to the district. In a proceeding to collect unremitted fees, a sworn affidavit of the district specifying the amount of unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) The Public Utility Commission of Texas may impose an administrative penalty under Subchapter B, Chapter 15, Utilities Code, against a service provider who is a person regulated under the Utilities Code if the person:

(1) does not provide information required by a district under this section; or

(2) bills and collects a 9-1-1 emergency service fee as required by this chapter but does not remit the fee to the appropriate district.

Added by Acts 2005, 79th Leg., Ch. 952 (H.B. 1583), Sec. 1, eff. September 1, 2005.

Sec. 772.003. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL



MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 11, eff. September 1, 2013.

**SUBCHAPTER B. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH  
POPULATION OVER TWO MILLION**

Sec. 772.101. SHORT TITLE. This subchapter may be cited as the 9-1-1 Emergency Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.102. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of the units to develop and improve emergency communication procedures and facilities in a manner that makes possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

- (1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;
- (2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;
- (3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the

boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.103. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a communication district created under this subchapter.

(3) "Principal municipality" means the municipality with the largest population in a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.104. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 3.3 million and the adjacent territory described by Section 772.105 in which a district was created under Chapter 97, Acts of the 68th Legislature, Regular Session, 1983, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 41, eff. Sept. 1, 2001.

Sec. 772.105. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

(1) the territory of the county for which the district is established; and

(2) for each municipality partially located in the county for which the district is established, the territory of that municipality located in another county.

(b) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(c) A public agency located wholly or partly in a county adjoining the county for which the district is created and that has received 9-1-1 service through a regional planning commission interlocal agreement with the district for at least 10 years may become part of the district by resolution of the agency's governing body and approval by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 314 (S.B. 621), Sec. 1, eff. September 1, 2005.

Sec. 772.106. BOARD OF MANAGERS. (a) The district is governed by a board of managers consisting of:

- (1) one member appointed by the commissioners court of the county;
  - (2) two members appointed by the mayor of the principal municipality, with approval of the city council;
  - (3) one member appointed jointly by the volunteer fire departments operating in whole or part in the district, with the selection process coordinated by the county fire marshal;
  - (4) one member appointed jointly by the municipalities other than the principal municipality that are participating jurisdictions; and
  - (5) one member appointed by the principal service supplier.
- (b) The board member appointed by the principal service supplier is a nonvoting member.
- (c) Board members are appointed for staggered terms of two years, with three members' terms expiring each year.
- (d) A board member may be removed from office at will by the entity that appointed the member.
- (e) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.
- (f) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.
- (g) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(h) The director of the district or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer or other member presiding at the meeting shall read and sign the record and the secretary shall attest the record.

(i) A majority of the voting members of the board constitutes a quorum.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 772.107. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.108. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the board considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.109. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must be approved by the board and then presented to and approved by the commissioners court of the county for which the district is established and the governing body of the principal municipality. A revision of the budget must be approved by the same entities in the same manner as the budget.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to all participating public agencies in writing a sworn statement of all money received by the district and how the money was disbursed or otherwise disposed of during the preceding fiscal year. The report must show in detail the operations of the district for the period covered by the report.

(c) The board shall perform an independent financial audit of the district annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.110. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification; or
- (6) selective routing.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

- (1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or
- (2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district under this subchapter must be computerized.

(e) 9-1-1 service is mandatory for each individual telephone subscriber in the district and is not an optional service under any definitions of terms relating to telephone service.

(f) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 9, eff. Sept. 1, 1995.

Sec. 772.111. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.112. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.113. POWERS OF DISTRICT. (a) The district is a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may receive federal, state, county, or municipal funds and private funds and may spend those funds for the purpose of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.114. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district if authorized to do so by a majority of the votes cast in the election to confirm the creation of the district and by a majority vote of the governing body of each participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee must have uniform

application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, at a later date, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.105(b) when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 8, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 3, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1342 (S.B. 314), Sec. 1, eff. September 1, 2005.

Sec. 772.115. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.114 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The



service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect

fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are established, the court may award the district court costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 9, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 10, eff. Sept. 1, 1995.

Sec. 772.116. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.117. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.118. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscribers and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under

Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or a business service user under Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 10, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 11, eff. Sept. 1, 1995.

Sec. 772.119. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.120. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the principal part of the district was located shall assume the assets of

the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee by the county after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.121. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; or

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.122. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.123. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell

the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.124. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.125. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and

maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.126. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.127. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general in the same manner as the district's other bonds and shall be registered by the comptroller on the surrender and cancellation of

the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.128. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.

(a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) a sinking fund of a municipality, county, school

district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts,

and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.129. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER C. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH  
POPULATION OVER 1.5 MILLION**

Sec. 772.201. SHORT TITLE. This subchapter may be cited as the Emergency Communication District Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.202. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

- (1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;
- (2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;
- (3) a dominant part of the state's population is located in



rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.203. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.204. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 1.5 million in which an emergency communication district was created under Chapter 7, Acts of the 68th Legislature, 2nd Called Session, 1984, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 51, eff. September 1, 2011.

Sec. 772.205. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in the county for which the district is created or a public agency located in whole or part in a county adjoining the county for which the district is created, by resolution adopted by its governing body and approved by the board of

the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.206. BOARD OF MANAGERS. (a) A district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county for which the district is established;

(2) two members appointed by the governing body of the most populous municipality located wholly or partly in the county for which the district is established, if that municipality has a population of more than 150,000, or, if that municipality has a population of 150,000 or less, one member appointed by the governing body;

(3) one member appointed by the governing body of the second most populous municipality located wholly or partly in the county for which the district is established;

(4) one member appointed by the governing body of the third most populous municipality located wholly or partly in the county for which the district is established;

(5) one member appointed by the principal service supplier;

(6) one member appointed by the governing body of the most populous municipality that is a member of the district and is located wholly outside the county for which the district is established; and

(7) one member appointed as provided by this section to represent the other municipalities located wholly or partly in the district.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) The board member appointed under Subsection (a)(7) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member. The governing bodies of those municipalities, by agreement of their presiding officers, shall set the time and place to meet and the procedures for selecting the board member.

(d) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(e) A board member may be removed from office at will by the entity that appointed the member.

(f) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(g) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(h) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(i) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(k) A majority of the voting members of the board constitutes a quorum.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 238, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1288, Sec. 1, eff. Sept. 1, 2001.

Sec. 772.207. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.208. DIRECTOR OF DISTRICT. (a) The board shall

appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.209. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to the commissioners court of the county in which the majority of the district is located;

(3) be presented to the governing body of each municipality eligible to appoint a member of the board of managers under Sections 772.206(a)(2)-(4) and (6);

(4) be presented to the governing body of each other participating jurisdiction as provided by Subsection (b); and

(5) subject to Subsection (c), be approved by a majority of the entities to which the budget must be presented under Subdivisions (2) through (4).

(b) For purposes of Subsection (a)(4), the proposed budget must be presented to:

(1) the mayor's council established to administer urban development block grant funds, if one exists in the district; or

(2) if a mayor's council does not exist in the district, the governing bodies of the other participating jurisdictions.

(c) For the purpose of determining approval by a majority under Subsection (a)(5) if the budget is required to be presented under Subsection (b)(2), the other participating jurisdictions are considered to be acting jointly as one entity.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must state in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1288, Sec. 2, eff. Sept. 1, 2001.

Sec. 772.210. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification;
- (6) selective routing; or
- (7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district created under this subchapter must be computerized.

(e) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an

officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 12, eff. Sept. 1, 1995.

Sec. 772.211. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.212. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services, such as poison control, suicide prevention, and civil defense, with the approval of the board and the consent of the participating jurisdiction.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of the participating jurisdiction.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.213. POWERS OF DISTRICT. (a) The district is a body

corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.214. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and

installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date the board approves making the public agency a participating jurisdiction. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 4, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1340 (S.B. [171](#)), Sec. 1, eff. September 1, 2005.

Sec. 772.215. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.214 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it



collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 13, eff. Sept. 1, 1995.

Sec. 772.216. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the

selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.217. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing and operating a 9-1-1 system and costs for related services that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 39, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.218. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A business service user that owns or leases a publicly or privately owned telephone switch used to provide telephone services to nonaffiliated businesses shall provide to those business end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other business end users in the district.

(e) A business service user that owns or leases a publicly or privately owned telephone switch used to consolidate telephone services at two or more physical addresses shall provide a level of 9-1-1 service that identifies an accurate physical address and telephone number for each 9-1-1 call. For purposes of this section, each floor of a multitenant building is a different physical address.

(f) A hotel, motel, or similar lodging facility that does not operate with a 24-hour, seven-day on-site telephone operator must use a system that furnishes the telephone number and location of the individual unit from which a 9-1-1 call is placed.

(g) A service supplier, business service user, or lodging facility that implements the network and database enhancements necessary to provide a service described in Subsection (b), (d), (e), or (f), including a supplier, user, or facility that is not required to provide the service, is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in this section.

(h) Subsections (d) and (e) do not apply to a telecommunications system installed by a public school district or a state agency.

(i) Subsections (d), (e), and (f) apply only to a telecommunications system installed on or after September 1, 2003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 13, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 14, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 84, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.219. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.220. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire the outstanding bonded indebtedness of the district, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding bonded indebtedness of the district.

(b) The commissioners court shall retire the district's indebtedness to the extent practicable according to the terms of the bonds and the terms of the orders and resolutions authorizing issuance of the bonds.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.221. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.222. REPAYMENT OF BONDS. The board may provide for

the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.223. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.224. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.225. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.226. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.227. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured

but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.226 and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.228. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.

(a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.229. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER D. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH  
POPULATION OVER 20,000**

Sec. 772.301. SHORT TITLE. This subchapter may be cited as the Emergency Telephone Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.302. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical,



rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.303. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.304. APPLICATION OF SUBCHAPTER. (a) This subchapter applies only to a county with a population of more than 20,000 or to a group of two or more contiguous counties each with a population of 20,000 or more in which an emergency communication district was created under Chapter 288, Acts of the 69th Legislature, Regular Session, 1985, before January 1, 1988, or to a public agency or group of public agencies that withdraws from participation in a regional plan under Section 771.058(d).

(b) This subchapter does not affect the authority of a public agency to operate under another law authorizing the creation of a

district in which 9-1-1 service is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 32, eff. Sept. 1, 1999.

Sec. 772.305. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in whole or part in a county adjoining the district, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.306. BOARD OF MANAGERS. (a) A district is governed by a board of managers.

(b) If the most populous municipality in the district has a population of more than 140,000, the board consists of:

(1) one member for each county in the district appointed by the commissioners court of each county;

(2) two members appointed by the governing body of the most populous municipality in the district;

(3) one member appointed by the governing body of the second most populous municipality in the district;

(4) one member appointed as provided by this section to represent the other municipalities located in whole or part in the district; and

(5) one member appointed by the principal service supplier.

(c) If Subsection (b) does not apply to a district, the board consists of:

(1) the following members representing the county or counties in the district:

(A) if the district contains only one county, two members appointed by the commissioners court of the county;

(B) if the district originally contained only one county but contains more than one county when the appointment is made, two members appointed by the commissioners court of the county in which the district was originally located, and one member

appointed by the commissioners court of each other county in the district; or

(C) if the district originally contained more than one county and the district contains more than one county when the appointment is made, one member appointed by the commissioners court of each county in the district;

(2) two members appointed jointly by the majority vote of the municipalities voting on the appointment and located in whole or part in the district;

(3) one member appointed jointly by the volunteer fire departments operating wholly or partly in the district, with the appointment process coordinated by the county fire marshal or marshals of the county or counties in the district; and

(4) one member appointed by the principal service supplier.

(d) The board member appointed by the principal service supplier is a nonvoting member. If the board is appointed under Subsection (c), the principal service supplier may waive its right to appoint the board member and designate another service supplier serving all or part of the district to make the appointment.

(e) The board member appointed under Subsection (b)(4) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member.

(f) The initial board members appointed by municipalities under Subsection (c)(2) are appointed by all the municipalities located in whole or part in the district.

(g) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(h) A board member may be removed from office at will by the entity that appointed the member.

(i) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(j) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(k) The board may appoint from among its membership a presiding

officer and any other officers it considers necessary.

(l) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(m) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(n) A majority of the voting members of the board constitutes a quorum.

(o) In an emergency communication district subject to this subchapter located entirely in a county with a population of less than 30,000, the board consists of:

(1) the appropriate members listed in Subsection (c); and

(2) a peace officer licensed under Chapter 1701, Occupations Code, appointed by the county sheriff.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 638, Sec. 15, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 901, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 622 (H.B. [1187](#)), Sec. 1, eff. June 19, 2009.

Sec. 772.307. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.308. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.309. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to and approved by the commissioners court of each county in the district;

(3) be presented to and approved by the governing body of the most populous municipality in the district, if that municipality has a population of more than 140,000; and

(4) be presented to the governing body of each other participating jurisdiction and approved by a majority of those jurisdictions.

(b) The board shall submit a draft of the proposed budget to the governing bodies of the participating jurisdictions not later than the 45th day before the date the board adopts the budget. The participating jurisdictions shall review the proposed budget and submit any comments regarding the budget to the board.

(c) If the governing body of a county, municipality, or other participating jurisdiction does not approve or disapprove the budget before the 61st day after the date the body received the proposed budget for review, the budget is approved by operation of law.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must show in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1406, Sec. 2, eff. Aug. 30, 1999.

Sec. 772.310. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification;
- (6) selective routing; or
- (7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system.

(e) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 16, eff. Sept. 1, 1995.

Sec. 772.311. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.312. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.313. POWERS OF DISTRICT. (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.314. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may

impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate in a service year charged a service user by the principal service supplier in the participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue generated by the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money generated by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee



authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

(g) For the purposes of this section, the jurisdiction of the county is the unincorporated area of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 14, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 5, eff. June 18, 1999.

Sec. 772.315. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.314 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the

administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 17, eff. Sept. 1, 1995.

Sec. 772.316. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.317. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.318. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 16, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 18, eff. Sept. 1, 1995.

Sec. 772.319. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerks. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may

choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.320. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located or, if the district contains more than one county, the commissioners courts of those counties acting jointly, shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court or courts acting jointly shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court or courts. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court or courts shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court or courts by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.321. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.322. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.323. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and the rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.324. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.325. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledge revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.326. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.327. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.326 and shall be registered by the comptroller on the surrender and cancellation of the bonds refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.328. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.

(a) District bonds are legal and authorized investments for:

(1) a bank;

- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) a sinking fund of a municipality, county, school

district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.329. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER E. EMERGENCY COMMUNICATION SERVICE: COUNTIES WITH  
POPULATION OVER TWO MILLION**

Sec. 772.402. APPLICATION OF SUBCHAPTER. This subchapter applies only to a county having a population of more than two million in which a communication district has not been created under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 52, eff. September 1, 2011.



Sec. 772.403. IMPLEMENTATION OF 9-1-1 SERVICE AND FEE. (a) A county to which this subchapter applies may implement a system for providing 9-1-1 service in the unincorporated areas of the county and may impose a service fee on local exchange telephone service customers in the area served. The fee may not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee.

(b) The commissioners court shall set the fee in an amount reasonable to cover the costs of providing the 9-1-1 service.

(c) Revenue from the fee may be used only for the planning, development, and provision of 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 17, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 6, eff. June 18, 1999.

Sec. 772.404. COLLECTION OF FEE. (a) A telecommunications carrier providing local exchange service in a county that imposes a fee under this subchapter shall collect the fees and deliver them to the commissioners court not later than the 60th day after the last day of the month during which the fees were collected.

(b) A customer on whom a fee is imposed under this subchapter is liable for the fee in the same manner the customer is liable for charges for service provided by the local exchange service provider. The fee must be stated separately in the customer's bill.

(c) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the county.

(d) A local exchange service provider collecting fees under this subchapter may retain as an administrative fee an amount equal

to two percent of the total amount of the fees it collects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 18, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 19, eff. Sept. 1, 1995.

Sec. 772.405. AUDIT OF SERVICE PROVIDER. The commissioners court of a county may require at the county's expense an audit of a local exchange service provider collecting fees or surcharges under this subchapter. The audit must be limited to the collection and remittance of money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.406. NUMBER AND LOCATION IDENTIFICATION. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service relating to number and location identification that a service supplier provides to other residential end users in the county.

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 19, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 20, eff. Sept. 1, 1995.

Sec. 772.407. LIABILITY OF SERVICE PROVIDERS. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1995, 74th Leg., ch. 638, Sec. 21, eff. Sept. 1, 1995.

**SUBCHAPTER F. CONSOLIDATED DISTRICTS**

Sec. 772.451. CONSOLIDATION PROCEDURE. (a) Two or more districts governed by this chapter may consolidate into a single district as provided by this section.

(b) If the board of managers of each district to be consolidated finds that the consolidation of the districts would benefit the participating jurisdictions of the district, the board may call and hold an election in the district's participating jurisdictions to approve the consolidation.

(c) The election in each district must be held on the same uniform election date provided by Chapter 41, Election Code.

(d) Each district shall pay the election expenses for its participating jurisdictions.

(e) The ballot for the election to approve the consolidation must be printed to permit voting for or against the proposition that the district may consolidate with other named districts.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.452. CONSOLIDATION PLANNING. (a) If a majority of the voters voting at the election approve the consolidation, the board of managers of the district shall conduct a planning meeting with the boards of managers of the other districts whose voters have approved the consolidation.

(b) The meeting must be a public meeting. At the meeting, the boards of managers shall devise a consolidation plan to:

- (1) combine the debts and assets of the districts;
- (2) pay outstanding bonds of the districts and issue refunding bonds as necessary to pay the bonds;
- (3) impose a uniform 9-1-1 emergency service fee; and
- (4) adjust the membership and qualifications of the board of managers of the consolidated district.

(c) If a consolidated district is not created under Section 772.453 before the first anniversary of the date of the election held under Section 772.451, a consolidated district may not be created until:

- (1) the districts make another finding that the consolidation would benefit the participating jurisdictions; and
- (2) the consolidation is approved at another election held

under Section 772.451.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.453. CREATION OF CONSOLIDATED DISTRICT. (a) When the board of managers of each district has adopted the same consolidation plan, the combined boards of managers shall declare the consolidated district created.

(b) If the board of managers of a district does not agree to a consolidation plan, the remaining districts may consolidate on the terms of a mutually agreeable consolidation plan.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.454. BOARD OF MANAGERS. (a) The consolidated district is governed by a board of managers appointed in accordance with the order issued by the temporary board of managers under Subsection (b). The members of the boards of managers of all the districts consolidated serve as a temporary board until all members of the initial board of managers are appointed and qualify. The temporary board has all authority necessary to operate and administer the district.

(b) Before the 45th day after the date the district is created, the temporary board of managers by order shall adjust the membership of the board. The order must be substantially in accordance with the consolidation plan and must specify:

- (1) the number of members of the board;
- (2) the entity or combination of entities that appoints each member;
- (3) whether each member may or may not vote; and
- (4) the term of each member of the initial board so that as near to one-half of the members as is practical serve terms that expire in even-numbered years and the remaining members serve terms that expire in odd-numbered years.

(c) The order issued under Subsection (b) must preserve as nearly as possible the proportional representation of interests exhibited by the memberships of the boards of managers of the several districts before consolidation.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.455. GOVERNANCE OF CONSOLIDATED DISTRICT. The consolidated district and its board of managers are governed by the provisions of this chapter that governed the most populous of the districts before the consolidation, except as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

**SUBCHAPTER G. REGIONAL EMERGENCY COMMUNICATIONS DISTRICTS: STATE PLANNING REGION WITH POPULATION OVER 1.5 MILLION**

Sec. 772.501. SHORT TITLE. This subchapter may be cited as the Regional Emergency Communications District Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.502. DEFINITIONS. In this subchapter:

- (1) "Board" means the board of managers of a district.
- (2) "District" means a regional emergency communications district created under this subchapter.
- (3) "Participating jurisdiction" means a county or principal municipality that adopts a resolution to participate in a district created under this subchapter.
- (4) "Principal municipality" means the municipality with the largest population in a region.
- (5) "Region" means a state planning region established under Chapter 391, Local Government Code.
- (6) "Regional planning commission" means a commission or council of governments created under Chapter 391, Local Government Code, for a designated region.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.503. APPLICATION OF SUBCHAPTER. This subchapter

applies to a region:

- (1) with a population of more than 1.5 million;
- (2) composed of counties and municipalities that operate a 9-1-1 system solely through a regional planning commission; and
- (3) in which the governing bodies of each county and the principal municipality in the region adopt a resolution under Section 772.504 to participate in the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.504. CREATION OF DISTRICT. (a) A district is created when the governing bodies of each county and the principal municipality in a region adopt a resolution approving the district's creation and the county's or municipality's participation in the district. The district's creation is effective on the date the last county or municipal governing body in the region adopts the resolution.

(b) The district shall file with the county clerk of each county in which the district is located a certificate declaring the creation of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.505. POLITICAL SUBDIVISION; DISTRICT POWERS. (a) A district is a political subdivision of this state created to carry out essential governmental functions.

(b) A district may exercise all powers necessary or convenient to carry out the purposes and provisions of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.506. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

- (1) the territory of the region in which the district is established; and

(2) for each municipality partially located in the region, the territory of that municipality located in another region.

(b) If a municipality in the district annexes territory that is outside the boundaries of the district, the annexed territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.507. BOARD. (a) A district is governed by a board of managers composed of the members of the governing body of the regional planning commission for the region in which the district is established. Service on the board by a member of the governing body is an additional duty of the member's office or employment.

(b) A board member serves without compensation. The district shall pay all reasonable expenses necessarily incurred by the board member in performing the board's functions under this subchapter.

(c) A majority of the voting members of the board constitutes a quorum.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.508. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt orders, rules, and policies governing the operations of the board and the district.

(c) The board may contract with any person to carry out the purposes of this subchapter.

(d) The board shall determine the nature and sources of funding for the district. The board may accept grants or other funding from the federal or state government, a county, a municipality, or a private person.

(e) The board may sue in the district's name.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.509. ADVISORY COMMITTEE. (a) The board shall appoint an advisory committee consisting of representatives of the participating jurisdictions. The advisory committee shall review, advise, and provide recommendations to the board on district issues, including equipment, training, budget, and general operational issues.

(b) An advisory committee member must have the training and experience necessary to perform the duties assigned by the board.

(c) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.510. DIRECTOR OF DISTRICT; STAFF. (a) The executive director of the regional planning commission in the district's region serves as director of the district.

(b) The director shall:

(1) perform all duties required by the board;

(2) ensure that board policies and procedures are implemented for the purposes of this subchapter; and

(3) assign employees of the regional planning commission to perform duties under this subchapter as necessary to carry out the district's operations.

(c) The director may use district money to compensate an employee assigned duties under this subchapter and the director.

(d) The director and an employee assigned duties under this subchapter are employees of the regional planning commission for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.511. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare, under the direction of the board, an annual budget for the district. The budget and any revision of the budget must be approved by the board.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board a



written report of all money received by the district and how the money was spent during the preceding fiscal year. The report must show, in detail, the operations of the district for the period covered by the report.

(c) The board annually shall have an independent financial audit made of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.512. PROVISION OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification; or
- (6) selective routing.

(b) The district shall recommend minimum standards for a 9-1-1 system. The 9-1-1 system must be computerized.

(c) For each individual telephone subscriber in the district, 9-1-1 service is mandatory and is not an optional service under any definition of terms relating to telephone service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.513. LIABILITY. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service may not be held liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff.

September 1, 2013.

Sec. 772.514. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system:

(1) may maintain a separate number for an emergency telephone call; and

(2) shall maintain a separate number for a nonemergency telephone call.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.515. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for firefighting, law enforcement, ambulance, and medical services to a public safety agency that provides the requested service at the location from which the call originates. A 9-1-1 system may provide for transmitting requests for other emergency services, including poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed to gain access to emergency services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.516. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or the charge's equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on:

(1) more than 100 local exchange access lines or the lines' equivalent for a single business entity at a single location, unless the lines are used by residents of the location; or

(2) any line that the Commission on State Emergency Communications has excluded from the definition of a local exchange access line or equivalent local exchange access line under Section 771.063.

(c) If a business service user provides residential facilities, each line that terminates at a residential unit and is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application throughout the district and be imposed in each participating jurisdiction in the district.

(d) The rate of the fee may not exceed six percent of the monthly base rate the principal service supplier in the participating jurisdiction charges a service user.

(e) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(f) In imposing the fee, the board shall attempt to match the district's revenues to the district's operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(g) For a county or municipality whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming county or municipality an additional amount of money to cover the initial cost of providing 9-1-1 service to that county or municipality. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.506(b) when the territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.517. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.516 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the service supplier's regular billing practice. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment, the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees the service supplier or business service user collects until at least the second anniversary of the date of collection. The board may require, at the board's expense, an annual audit of the service supplier's or business service user's books and records with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier may retain an administrative fee of two percent of the amount of fees the service supplier collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. The service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent

fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent and of the amount of the delinquent fee. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may file legal proceedings against a service user to collect fees not paid by the service user and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are filed by the district, the court may award costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at the legal rate beginning on the date the payment becomes due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.518. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository until the second anniversary of the date of selection and until a successor depository is selected and qualified.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.519. ALLOWABLE EXPENSES. A district's allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary to establish and operate a public safety answering point and other related operations that the board considers necessary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.520. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish, for each call, the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) may not be held liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.521. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held on or before the third anniversary of the date of the district's creation. Subsequent hearings shall be held on or before the third anniversary of the date each resolution required by Subsection (c) is adopted.

(b) The board shall publish notice of the time and place of a hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) After the hearing, the board shall adopt a resolution on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.522. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued. The regional planning commission for the district's region shall assume the district's assets, provide 9-1-1 service, and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the regional planning commission shall continue to impose the 9-1-1 emergency service fee, and each service supplier shall continue to collect the fee for the regional planning commission. Proceeds from the imposition of the fee by the regional planning commission after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The regional planning commission shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the resolutions authorizing creation of the debts.

(c) The governing body of the regional planning commission for the district's region may adopt rules necessary to administer this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.523. ISSUANCE OF BONDS. The board may issue bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to provide 9-1-1 service to each participating jurisdiction; or

(2) the installation of equipment necessary for the district to provide 9-1-1 service to each participating jurisdiction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.524. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on district bonds by pledging all or part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.525. ADDITIONAL SECURITY FOR BONDS. (a) District bonds may be additionally secured by a deed of trust or mortgage lien on all or part of the district's physical properties and rights appurtenant to the properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and any other power necessary for the further security of the bonds.

(b) The bond trust indenture, regardless of the existence of a deed of trust or mortgage lien on the properties, may:

- (1) contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate; and
- (2) make provisions for:
  - (A) amendment or modification; and
  - (B) investment of district funds.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate the properties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.526. FORM OF BONDS. (a) A district may issue bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons:

- (1) are investment securities under Chapter 8, Business & Commerce Code;
- (2) may be issued registrable as to principal or to both principal and interest; and
- (3) may be made redeemable before maturity or contain a mandatory redemption provision at the option of the district.

(d) A district may issue bonds in the form, denomination, and manner and under the terms and conditions provided by the board in



the resolution authorizing the bonds' issuance. The bonds must be signed and executed as provided by the board in the resolution.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.527. PROVISIONS OF BONDS. (a) In this section, "resolution" means a board resolution authorizing the issuance of bonds, including refunding bonds.

(b) In a resolution, the board may:

(1) provide for the flow of funds and the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(c) A resolution may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue; or

(2) reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(d) A resolution may contain other provisions and covenants determined by the board.

(e) The board may adopt and have executed any other proceedings or instruments necessary or convenient for issuance of bonds.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.528. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve the bonds. On approval by the attorney general, the comptroller shall register the bonds.

(c) After approval and registration, the bonds are

incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with the bonds' terms for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.529. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of the district's outstanding bonds, including matured and unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise, as determined by the board, not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) Refunding bonds must be approved by the attorney general in the same manner as the district's other bonds. The comptroller shall register the refunding bonds on the surrender and cancellation of the bonds being refunded.

(e) A resolution authorizing the issuance of refunding bonds may provide that the bonds be sold and the proceeds deposited in a place at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to the bonds' maturity dates or option dates, if the bonds have been duly called for payment before maturity according to the bonds' terms, must be deposited in the place at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of the bonds being refunded.

(f) A refunding may be accomplished in one or more installment deliveries. Refunding bonds and the bonds' interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) Instead of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.530. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.

(a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a credit union;
- (4) a trust company;
- (5) a savings and loan association;
- (6) an insurance company;
- (7) a fiduciary;
- (8) a trustee;
- (9) a guardian; and

(10) a sinking fund of a municipality, county, school district, special district, and other political subdivision of this state and other public funds of this state and state agencies, including the permanent school fund.

(b) District bonds may secure deposits of public funds of the state or a municipality, county, school district, or other political subdivision of this state. The bonds are lawful and sufficient security for deposits to the extent of the bonds' value if accompanied by all unmatured coupons.

(c) District bonds are authorized investments under Chapter 2256, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.531. EXEMPTION FROM TAXATION. A bond issued by the district under this subchapter, any transaction relating to the bond, and profits made in the sale or redemption of the bond are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.532. TRANSFER OF ASSETS. If a regional emergency communications district is established under this subchapter, the regional planning commission for the region in which the district is established may transfer to the district any land, buildings, improvements, equipment, and other assets acquired by the regional planning commission in relation to the provision of 9-1-1 service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

## CHAPTER 773. EMERGENCY MEDICAL SERVICES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 773.001. SHORT TITLE. This chapter may be cited as the Emergency Health Care Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 1, eff. September 1, 2005.

Sec. 773.002. PURPOSE. The purpose of this chapter is to provide for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to that transportation in each area of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.003. DEFINITIONS. In this chapter:

(1) "Advanced life support" means emergency prehospital care that uses invasive medical acts.

(2) "Basic life support" means emergency prehospital care that uses noninvasive medical acts.

(3) "Board" means the Texas Board of Health.

(4) "Bureau" means the department's bureau of emergency management.

(5) "Bureau chief" means the chief of the bureau of emergency management.

(6) "Commissioner" means the commissioner of health.

(7) "Department" means the Department of State Health Services.

(7-a) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

- (A) placing the patient's health in serious jeopardy;
- (B) serious impairment to bodily functions; or
- (C) serious dysfunction of any bodily organ or part.

(8) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(9) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(10) "Emergency medical services personnel" means:

- (A) emergency care attendant;
- (B) emergency medical technicians;
- (C) emergency medical technicians--intermediate;
- (D) emergency medical technicians--paramedic; or
- (E) licensed paramedic.

(11) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services.

(12) "Emergency medical services vehicle" means:

- (A) a basic life-support emergency medical services vehicle;
- (B) an advanced life-support emergency medical services vehicle;
- (C) a mobile intensive-care unit; or
- (D) a specialized emergency medical services vehicle.

(13) "Emergency medical services volunteer" means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for expenses.

(14) "Emergency medical services volunteer provider" means

an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(15) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(15-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(16) "First responder organization" means a group or association of certified emergency medical services personnel that, working in cooperation with a licensed emergency medical services provider, provides immediate on-scene care to ill or injured persons but does not transport those persons.

(17) "Governmental entity" means a county, municipality, school district, or special district or authority created in accordance with the Texas Constitution.

(18) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas State Board of Medical Examiners.

(19) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(20) "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(21) [Blank].

(22) "Trauma services" includes services provided to a severely or seriously injured patient who has a principal diagnosis listed in the Injuries and Poisonings Chapter of the International Classification of Diseases, Clinical Modification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 239, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 853, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch.

435, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 2.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.808, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(29), eff. September 1, 2013.

Sec. 773.004. VEHICLES AND PERSONNEL EXCLUDED FROM CHAPTER.

(a) This chapter does not apply to:

(1) air transfer that does not advertise as an ambulance service and that is not licensed by the department;

(2) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(3) an industrial ambulance; or

(4) a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

(b) In this section, "industrial ambulance" means a vehicle owned and operated by an industrial facility that is not available for hire or use by the public except to assist the local community in a disaster or when existing ambulance service is not available, and includes a ground vehicle at an industrial site used:

(1) for the initial transportation or transfer of the unstable urgently sick or injured; or

(2) to transport from the job site to an appropriate medical facility a person who becomes sick, injured, wounded, or otherwise incapacitated in the course of employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 240, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(a), eff. September 1, 2007.

Sec. 773.0045. TEMPORARY EXEMPTIONS FOR EMERGENCY MEDICAL SERVICES PERSONNEL PRACTICING IN RURAL AREA. (a) In this section, "rural area" means:

(1) a county with a population of 50,000 or less; or  
(2) a relatively large, isolated, and sparsely populated area in a county with a population of more than 50,000.

(b) The department on a case-by-case basis may temporarily exempt emergency medical services personnel who primarily practice in a rural area from a requirement imposed either by Section 773.050 or 773.055 or by a rule adopted by the department under Section 773.050 or 773.055 if specific circumstances that affect the rural area served by the emergency medical services personnel justify the exemption. The department may temporarily exempt the emergency medical services personnel from a requirement imposed:

(1) by a department rule adopted under Section 773.050 or 773.055 only if the department finds that, under the circumstances, imposing the requirement would not be in the best interests of the people in the rural area who are served by the emergency medical services personnel; and

(2) by Section 773.050 or 773.055 only if the department finds that, under the circumstances, there is a substantial risk that imposing the requirement will detrimentally affect the health or safety of one or more persons in the affected rural area or hinder the ability of emergency medical services personnel who practice in the area to alleviate a threat to the health or safety of one or more persons in the area.

(c) The exemption must be in writing, include the findings required by Subsection (b), and expire at a stated time. The written findings must be accompanied by a concise and explicit statement that specifically describes the circumstances that support the finding.

(d) In granting the exemption, the department in writing must require the affected emergency medical services personnel or the appropriate emergency medical services provider to adopt a written plan under which the applicable requirement will be met as soon as



possible.

(e) A temporary exemption under this section may allow emergency medical services personnel who are applicants for certification at a higher level of training to temporarily practice at the higher level.

Added by Acts 2003, 78th Leg., ch. 848, Sec. 1, eff. June 20, 2003.

Sec. 773.005. BUREAU OF EMERGENCY MANAGEMENT. (a) The bureau of emergency management is in the department under the direction of a bureau chief.

(b) The bureau chief must have:

- (1) proven ability as an administrator and organizer; and
- (2) direct experience in emergency medical services.

(c) In filling the position of bureau chief, the department shall give preference to a physician who applies for the position.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency medical services, trauma facilities, and trauma care systems is established as an account in the general revenue fund. Money in the account may be appropriated only to the bureau for the purposes specified by Section 773.122.

(b) The account is composed of money deposited to the account under Article 102.0185, Code of Criminal Procedure, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Added by Acts 2003, 78th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 2003.

Sec. 773.007. SUPERVISION OF EMERGENCY PREHOSPITAL CARE. (a) The provision of advanced life support must be under medical supervision and a licensed physician's control.

(b) The provision of basic life support may be under medical supervision and a licensed physician's control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.008. CONSENT FOR EMERGENCY CARE. Consent for emergency care of an individual is not required if:

(1) the individual is:

(A) unable to communicate because of an injury, accident, or illness or is unconscious; and

(B) suffering from what reasonably appears to be a life-threatening injury or illness;

(2) a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or

(3) the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.009. LIMITATION ON CIVIL LIABILITY. A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.011. SUBSCRIPTION PROGRAMS. (a) An emergency medical services provider may create and operate a subscription program to fund and provide emergency medical services.

(b) The board shall adopt rules establishing minimum standards for the creation and operation of a subscription program.

(c) The board shall adopt a rule that requires an emergency medical services provider to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions and creating

and operating a subscription program. The surety bond must be issued by a company that is licensed by or eligible to do business in this state.

(d) The board may adopt rules for waiver of the surety bond.

(e) The Insurance Code does not apply to a subscription program established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 242, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 2, eff. Aug. 28, 1995.

Sec. 773.012. ADVISORY COUNCIL. (a) The governor shall appoint an advisory council to advise the board regarding matters related to the responsibilities of the board, commissioner, and department under this chapter. In making appointments to the advisory council, the governor shall ensure that approximately one-half of the members of the advisory council are residents of rural areas of the state.

(b) The advisory council is composed of the following 15 members appointed by the governor:

(1) a board-certified emergency physician, appointed from a list of names recommended by a statewide professional association of emergency physicians;

(2) a licensed physician who is an emergency medical services medical director, appointed from a list of names recommended by a statewide professional association of emergency medical services medical directors;

(3) a fire chief for a municipality that provides emergency medical services, appointed from a list of names recommended by a statewide fire chiefs association;

(4) an officer or employee of a private provider of emergency medical services who is involved with the development of a Texas Trauma System, appointed from a list of names recommended by a statewide association of private providers of emergency medical services;

(5) a volunteer who provides emergency medical services, appointed from a list of names recommended by a statewide association of volunteers;

(6) an educator in the field of emergency medical services;

(7) a member of an emergency medical services air medical team or unit, appointed from a list of names recommended by a statewide emergency medical services air medical association;

(8) a representative of a fire department that provides emergency medical services, appointed from a list of names recommended by a statewide association of firefighters;

(9) a representative of hospitals who is affiliated with a hospital that is a designated trauma facility in an urban community, appointed from a list of names recommended by a statewide association of hospitals;

(10) a representative of hospitals, who is affiliated with a hospital that is a designated trauma facility in a rural community, appointed from a list of names recommended by a statewide association of hospitals;

(11) a representative of a county provider of emergency medical services;

(12) one licensed physician who is a pediatrician with trauma or emergency care expertise;

(13) one trauma surgeon or one registered nurse with trauma expertise; and

(14) two representatives of the general public who are not qualified to serve under another subdivision of this subsection.

(c) A person may not be a public member of the advisory council if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of emergency medical services;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than reimbursement authorized by law for advisory council membership, attendance, or expenses.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or

professional problems and in promoting their common interest. A person may not be a member of the advisory council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of emergency medical services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of emergency medical services.

(e) A person may not be a member of the advisory council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(f) Members of the advisory council serve staggered six-year terms with the terms of five members expiring January 1 of each even-numbered year. A vacancy on the advisory council is filled in the same manner as the original appointment for the unexpired term.

(g) The governor shall appoint the presiding officer of the advisory council.

(h) A member of the advisory council serves without compensation. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory council.

(i) The advisory council shall meet at least quarterly in the city of Austin. The advisory council shall meet as provided by procedural rules adopted by the advisory council or at the call of the presiding officer. The advisory council may appoint committees it considers necessary to perform its duties.

(j) The advisory council periodically shall review board rules relating to this chapter and may recommend changes in those rules to the board. The board and the commissioner shall ensure that the advisory council is given adequate time and opportunity to review and comment on each rule proposed for adoption by the board under this chapter, including the amendment or repeal of an existing rule, but not including an emergency rule.

(k) The advisory council shall assess the need for emergency medical services in the rural areas of the state.

(l) The advisory council shall develop a strategic plan for:

(1) refining the educational requirements for certification and maintaining certification as emergency medical services personnel; and

(2) developing emergency medical services and trauma care

systems.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.01, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 2, eff. Sept. 1, 2001.

Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003 and board rules.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 3, eff. Sept. 1, 2001.

Sec. 773.014. ADMINISTRATION OF EPINEPHRINE. (a) An emergency medical services provider and a first responder organization may acquire and possess epinephrine auto-injector devices in accordance with this section. Emergency medical services personnel may carry and administer epinephrine auto-injector devices in accordance with this section.

(b) The department shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that emergency medical services personnel may administer an epinephrine auto-injector device to another only if the person has successfully completed a training course, approved by the department, in the use of the device that is consistent with the national standard training curriculum for emergency medical technicians.

(c) An emergency medical services provider or first responder organization may acquire, possess, maintain, and dispose of epinephrine auto-injector devices, and emergency medical services personnel may carry, maintain, administer, and dispose of epinephrine auto-injector devices, only in accordance with:

- (1) rules adopted by the department under this section; and
- (2) a delegated practice agreement that provides for medical supervision by a licensed physician who either:
  - (A) acts as a medical director for an emergency medical services system or a licensed hospital; or
  - (B) has knowledge and experience in the delivery of emergency care.

(c-1) A licensed physician acting as a medical director for an emergency medical services system may restrict the use and

administration of epinephrine auto-injector devices to certain emergency medical services personnel of the system through:

- (1) the delegated practice agreement; or
- (2) the adoption of policies governing the use of the devices by personnel within the system.

(d) Emergency medical services personnel who administer epinephrine auto-injector devices to others shall immediately report the use to the physician supervising the activities of the emergency medical services personnel.

(e) The administration of an epinephrine auto-injector device to another under this section is considered to be the administration of emergency care for the purposes of any statute relating to liability for the provision of emergency care. The administration of an epinephrine auto-injector device to another in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

(f) A person otherwise authorized to sell or provide an epinephrine auto-injector device to another may sell or provide the devices to an emergency medical services provider or a first responder organization authorized to acquire and possess the devices under this section.

(g) This section does not prevent emergency medical services personnel who are also licensed health care professionals under another health care licensing law and who are authorized to acquire, possess, and administer an epinephrine auto-injector device under the other health care licensing law from acting under the other law.

(h) This section does not impose a standard of care not otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 4, eff. Jan. 1, 2002;  
Acts 2001, 77th Leg., ch. 1131, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. [2827](#)), Sec. 1, eff. June 15, 2007.

Sec. 773.015. IDENTIFICATION OF CERTAIN PATIENTS RECEIVING EMERGENCY PREHOSPITAL CARE. Emergency medical services personnel or emergency room medical or admissions personnel may take the thumbprint of a person who receives emergency prehospital care if the

person:

- (1) does not possess personal identification at the time the care is administered;
- (2) is unconscious;
- (3) is transported across the Texas-Mexico border by ambulance or helicopter while receiving emergency prehospital care; and
- (4) is delivered to a hospital that has digital fingerprinting capabilities.

Added by Acts 2005, 79th Leg., Ch. 517 (H.B. 805), Sec. 1, eff. September 1, 2005.

Sec. 773.016. DUTIES OF EMERGENCY MEDICAL SERVICES PERSONNEL; CERTAIN EMERGENCY PREHOSPITAL CARE SITUATIONS. (a) In this section, "cardiopulmonary resuscitation" has the meaning assigned by Section 166.002.

(b) Emergency medical services personnel who are providing emergency prehospital care to a person are subject to Chapter 166, including Section 166.102.

(c) If a person's personal physician is present and assumes responsibility for the care of the person under the applicable requirements of Chapter 197, Title 22, Texas Administrative Code, while the person is receiving emergency prehospital care, the physician may order the termination of cardiopulmonary resuscitation only if, based on the physician's professional medical judgment, the physician determines that resuscitation should be discontinued.

(d) If a person's personal physician is not present or does not assume responsibility for the care of the person while the person is receiving emergency prehospital care, the emergency medical services system's medical director or online physician:

(1) shall be responsible for directing the emergency medical services personnel who are providing emergency prehospital care to the person; and

(2) may order the termination of cardiopulmonary resuscitation only if, based on the medical director's or online physician's professional medical judgment, the medical director or online physician determines that resuscitation should be discontinued.



Added by Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 2, eff. June 17, 2011.

**SUBCHAPTER B. STATE PLAN FOR EMERGENCY SERVICES**

Sec. 773.021. STATE PLAN. (a) The bureau shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick or injured persons.

(b) The state plan must include an emergency radio communication plan to be used by local governments and districts that provide emergency medical services to develop an emergency radio communication network linking emergency medical services providers with local hospitals or trauma centers.

(c) The advisory council shall consider the bureau's actions under Subsection (a), and the board shall review the council's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 488, Sec. 1, eff. June 12, 1995.

Sec. 773.022. SERVICE DELIVERY AREAS. The bureau shall divide the state into emergency medical services delivery areas that coincide, to the extent possible, with other regional planning areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.023. AREA PLANS. (a) The bureau shall:

(1) identify all public or private agencies and institutions that are used or may be used for emergency medical services in each delivery area; and

(2) enlist the cooperation of all concerned agencies and institutions in developing a well-coordinated plan for delivering emergency medical services in each delivery area.

(b) A delivery area plan must include an interagency communications network that facilitates prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, medical facilities, and other concerned agencies and institutions.

(c) A delivery area plan may include the use of helicopters

that may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.024. FEDERAL PROGRAMS. The bureau is the state agency designated to develop state plans required for participation in federal programs involving emergency medical services. The bureau may receive and disburse available federal funds to implement the service programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.025. ACCESSIBILITY OF TRAINING. (a) The bureau shall identify all individuals and public or private agencies and institutions that are or may be engaged in emergency medical services training in each delivery area.

(b) A delivery area plan must include provisions for encouraging emergency medical services training so as to reduce the cost of training to emergency medical services providers and to make training more accessible to low population or remote areas.

(c) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the bureau to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel, if the training is not available locally.

(d) A governmental entity or nongovernmental organization that sponsors or wishes to sponsor an emergency medical services provider or first responder organization in a rural or underserved area may request the bureau to provide or facilitate the provision of initial training for emergency care attendants, if the training is not available locally. The bureau shall ensure that the training is provided. The bureau shall provide the training without charge, or contract with qualified instructors to provide the training without charge, to students who agree to perform emergency care attendant services for at least one year with the local emergency medical services provider or first responder organization. The training must be provided at times and places that are convenient to the students. The bureau shall require that at least three students are scheduled

to take any class offered under this subsection.

(e) To facilitate all levels of emergency medical services training, the bureau shall consult with and solicit comment from emergency medical services providers, first responder organizations, persons who provide emergency medical services training, and other entities interested in emergency medical services training programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 5, eff. Sept. 1, 2001.

#### **SUBCHAPTER C. LICENSES, CERTIFICATION, AND QUALIFICATIONS**

Sec. 773.041. LICENSE OR CERTIFICATE REQUIRED. (a) A person may not operate, conduct, or maintain an emergency medical service, advertise that the person is an emergency medical services provider, or otherwise engage in or profess to be engaged in the provision of emergency medical services unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter.

(a-1) A person may not transport a patient by stretcher in a vehicle unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter. For purposes of this subsection, "person" means an individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(b) A person may not practice as any type of emergency medical services personnel unless the person is certified under this chapter and rules adopted under this chapter.

(c) A certificate or license issued under this chapter is not transferable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 244, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(b), eff. September 1, 2007.

Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR CERTIFICATE RENEWAL. The requirements and procedures adopted by the

department for the renewal of a certificate to practice as emergency medical services personnel issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for certification or for certificate renewal filed with the department; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for certification or for certificate renewal, as applicable, including information relevant to any new requirement applicable to the certificate held by the applicant.

Added by Acts 2009, 81st Leg., R.S., Ch. 332 (H.B. 846), Sec. 1, eff. September 1, 2009.

Sec. 773.042. BASIC LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as a basic life-support emergency medical services provider if it provides a vehicle that is designed for transporting the sick or injured, has personnel and sufficient equipment and supplies for providing basic life support, and is capable of providing emergency and nonemergency transportation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 3, eff. Aug. 28, 1995.  
Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 5, eff. September 1, 2005.

Sec. 773.043. ADVANCED LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as an advanced life-support emergency medical services provider if it:

(1) meets the requirements of a basic life-support emergency medical services provider; and

(2) has personnel and sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 4, eff. Aug. 28, 1995.

Sec. 773.044. MOBILE INTENSIVE-CARE PROVIDER QUALIFICATIONS. A provider qualifies as a mobile intensive-care provider if it:

- (1) meets the requirements of an advanced life-support emergency medical services provider; and
- (2) has personnel and sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 5, eff. Aug. 28, 1995.

Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. (a) A provider using a vehicle, including a helicopter, boat, fixed-wing aircraft, or ground vehicle, qualifies as a specialized emergency medical services provider if:

- (1) the vehicle is designed for transporting the sick or injured by air, water, or ground transportation; and
- (2) the provider has personnel and sufficient equipment and supplies to provide for the specialized needs of the patient transported.

(b) A rotor or fixed-wing aircraft and staff based in this state and used to transport a patient by stretcher and that holds itself out as an air ambulance service is required to be licensed by the department.

(c) An air ambulance company based in another state that transports patients from a point in this state is required to be licensed by the department as an emergency medical services provider. The department shall issue a license to an air ambulance company under this subsection if the company applies as required by this chapter and has met the department's qualifications for safely transporting patients. An air ambulance company accredited by the Committee on Air Ambulance Medical Services is rebuttably presumed to have met the department's qualifications.

(d) An air ambulance company licensed under Subsection (c) must include information regarding the physical location of the company's

base operations in any advertising by the company in this state. This subsection does not prohibit an air ambulance company with multiple locations from listing those locations in advertising, provided that the air ambulance company meets all the provisions of this chapter.

(e) An air ambulance company that is not located in this state and that advertises within this state must have at least one physical location in this state.

(f) This section does not require an air transportation provider to be licensed if, in addition to the company's normal air transportation service, the air transportation company provides only voluntary, mercy-flight transportation at the company's own expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 245, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 6, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1182, Sec. 1, eff. Sept. 1, 1997.

Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS. (a) An individual qualifies as an emergency care attendant if the individual is certified by the department as minimally proficient to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(b) The department may not require an individual to have a high school diploma or a high school equivalency certificate for certification as an emergency care attendant under this chapter if the individual certifies that the individual will serve only as an emergency care attendant volunteer during the certification period.

(c) The board shall adopt rules as necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 246, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 2003.

Sec. 773.047. EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS. An individual qualifies as an emergency medical technician if the individual is certified by the department as minimally proficient to

perform emergency prehospital care that is necessary for basic life support and that includes cardiopulmonary resuscitation and the control of hemorrhaging.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 247, eff. Sept. 1, 1991.

Sec. 773.048. EMERGENCY MEDICAL TECHNICIAN--INTERMEDIATE QUALIFICATIONS. An individual qualifies as an emergency medical technician-intermediate if the individual is certified by the department as minimally proficient to provide emergency prehospital care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 248, eff. Sept. 1, 1991.

Sec. 773.049. EMERGENCY MEDICAL TECHNICIAN--PARAMEDIC QUALIFICATIONS. An individual qualifies as an emergency medical technician-paramedic if the individual is certified by the department as minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 249, eff. Sept. 1, 1991.

Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An individual qualifies as a licensed paramedic if the department determines that the individual is minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy. In addition, a licensed paramedic must complete a curriculum that includes college-level course work in accordance with rules adopted by the board.

Added by Acts 1997, 75th Leg., ch. 435, Sec. 2, eff. Sept. 1, 1997.

Sec. 773.050. MINIMUM STANDARDS. (a) Each basic life-support emergency medical services vehicle when in service must be staffed by at least two individuals certified as emergency care attendants or certified at a higher level of training.

(b) The executive commissioner by rule shall establish minimum standards for:

(1) staffing an advanced life-support emergency medical services vehicle, a mobile intensive-care unit, or a specialized emergency medical services vehicle;

(2) emergency medical services personnel certification and performance, including provisional certification, certification, decertification, recertification, suspension, emergency suspension, and probation;

(3) the approval of courses and training programs, the certification of program instructors, examiners, and course coordinators for emergency medical services personnel training, and the revocation and probation of an approval or certification;

(4) examinations of emergency medical services personnel;

(5) medical supervision of basic and advanced life-support systems;

(6) granting, suspending, and revoking a license for emergency medical services providers; and

(7) emergency medical services vehicles.

(c) The executive commissioner shall consider the education, training, criminal background, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and may establish criteria for interstate reciprocity of emergency medical services personnel. Each out-of-state application for certification must be accompanied by a nonrefundable fee of not more than \$120. The executive commissioner may also establish criteria for out-of-country emergency medical services personnel certification. Each out-of-country application for certification must be accompanied by a nonrefundable fee of not more than \$180.

(c-1) In this subsection, "United States military" means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard,



any reserve or auxiliary component of any of those services, or the National Guard. The executive commissioner by rule shall provide that an individual is eligible for emergency medical services personnel certification through reciprocity if the individual:

- (1) successfully completed emergency medical services training provided by the United States military;
- (2) has emergency medical services personnel credentials from the United States military; and
- (3) is certified by the National Registry of Emergency Medical Technicians.

(d) The executive commissioner may not adopt a rule that requires any system, service, or agency to provide advanced life-support or staffing beyond basic life-support levels except for providers of:

- (1) advanced life-support emergency medical services;
- (2) mobile intensive care; or
- (3) specialized emergency medical services.

(e) The executive commissioner shall adopt minimum standards for recognition of first responder organizations.

(f) The executive commissioner shall recognize, prepare, or administer continuing education programs for certified personnel. A certificate holder must participate in the programs to the extent required by the executive commissioner to remain certified.

(g) Rules adopting minimum standards under this section shall require:

- (1) an emergency medical services vehicle to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis; and
- (2) emergency medical services personnel to complete continuing education training in the administration of anaphylaxis treatment.

(h) The department may provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before enrollment in the educational and training requirements mandated by the executive commissioner. The department may charge a reasonable fee for the costs associated with prescreening to each applicant who requests prescreening.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 250, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 1, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 7, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. 2827), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 970 (H.B. 1960), Sec. 1, eff. September 1, 2013.

Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a license or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license or certificate holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license or certificate holder; or
- (4) restricts the license or certificate holder's advertisement under a trade name.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.03, eff. Sept. 1, 1999.

Sec. 773.051. MUNICIPAL REGULATION. A municipality may establish standards for an emergency medical services provider that are stricter than the minimum standards of this chapter and department rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 8, eff. Aug. 28, 1995.

Sec. 773.052. VARIANCES. (a) An emergency medical services provider with a specific hardship may apply to the bureau chief for a variance from a rule adopted under this chapter. The board may adopt a fee of not more than \$30 for filing an application for a variance.

(b) On receipt of a request for a variance, the department shall consider any relevant factors, including:

- (1) the nearest available service;
- (2) geography; and
- (3) demography.

(c) The bureau chief shall grant to a sole provider for a service area a variance from the minimum standards for staffing and equipment for the provision of basic life-support emergency medical services if the provider is an emergency medical services provider exempt from the payment of fees under Section 773.0581.

(d) An applicant for a variance under Subsection (c) must submit a letter to the department from the commissioners court of the county or the governing body of the municipality in which the provider intends to operate an emergency medical services vehicle. The letter must state that there is no other emergency medical services provider in the service area.

(e) The department shall grant a variance under Subsection (c) if the department determines that the provider qualifies and may deny the variance if the department determines that the provider does not qualify. The department shall give a provider whose application is denied the opportunity for a contested case hearing under Chapter 2001, Government Code.

(f) The department shall issue an emergency medical services license to a provider granted a variance under this section. The license is subject to annual review by the department. A provider is encouraged to upgrade staffing and equipment to meet the minimum standards set by the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 251, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(b), eff. Sept. 1, 2003.

Sec. 773.054. APPLICATIONS FOR PERSONNEL CERTIFICATION AND

TRAINING PROGRAM APPROVAL. (a) This section applies to an application for:

- (1) examination for certification of emergency medical services personnel;
- (2) approval of a course or training program; or
- (3) certification of a program instructor, examiner, or course coordinator.

(b) Each application must be made to the department on a form prescribed by the board and under rules adopted by the board.

(c) Each application under Subsection (a)(3) must be accompanied by a nonrefundable fee of not more than \$30 for a program instructor or examiner or \$60 for a course coordinator. The department may not require a fee for a certification from an instructor, examiner, or coordinator who does not receive compensation for providing services.

(d) Each application under Subsection (a)(2) must be accompanied by a nonrefundable fee of not more than \$30 for a basic course or training program or \$60 for an advanced course or training program. The department may not require a fee for approval of a course or training program if the course coordinator or sponsoring agency does not receive compensation for providing the course or training program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 253, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 9, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(c), eff. Sept. 1, 2003.

Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL. (a) A nonrefundable fee must accompany each application for emergency medical services personnel certification. The fee may not exceed:

- (1) \$90 for an emergency medical technician-paramedic or emergency medical technician-intermediate;
- (2) \$60 for an emergency medical technician or emergency care attendant;
- (3) \$90 for recertification of an emergency medical technician-paramedic or emergency medical technician-intermediate;
- (4) \$60 for recertification of an emergency medical

technician or emergency care attendant; or

(5) \$120 for certification or recertification of a licensed paramedic.

(b) Except as provided by Subsection (c), the department shall notify each examinee of the results of an examination for certification not later than the 30th day after the date on which the examination is administered.

(c) The department shall notify an examinee of the results of an examination not later than the 14th day after the date on which the department receives the results if the examination is graded or reviewed by a national testing service. If the notice of the examination results will be delayed longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(d) The department shall furnish a person who fails an examination for certification with an analysis of the person's performance on the examination if requested in writing by that person. The board may adopt rules to allow a person who fails the examination to retake all or part of the examination. A fee of not more than \$30 must accompany each application for reexamination.

(e) The department shall issue certificates to emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 773.050. A certificate is valid for four years from the date of issuance. The department shall charge a fee of not more than \$10 to replace a lost certificate.

(f) A fee required by this section is the obligation of the applicant but may be paid by the emergency medical services provider. If an applicant is required to be certified as a condition of employment, the emergency medical services provider shall pay for all fees required by this section, except for a fee to replace a lost certificate, in addition to any other compensation paid to that applicant if the provider is a municipality. A municipality that requires a fire fighter to be certified as emergency medical services personnel shall pay the fees required by this section.

(g) The board by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that

is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(h) The department shall ensure that the written examinations and any other tests that the department requires a person to take and pass to obtain or retain certification as emergency medical services personnel shall be administered during the course of a year at various locations around the state so that a person who resides in any part of the state will be able to take the examinations or tests without having to travel a distance that as a practical matter requires either travel by air or an overnight stay.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 254, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 2, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 10, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 19.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(d), eff. Sept. 1, 2003.

Sec. 773.056. APPROVAL OF TRAINING PROGRAMS; CERTIFICATION OF INSTRUCTORS, EXAMINERS, AND COORDINATORS. (a) The department shall approve each course or training program that meets the minimum standards adopted under Section 773.050.

(b) The department shall issue a certificate to each program instructor, examiner, or course coordinator who meets the minimum standards adopted under Section 773.050. The certificate is valid for two years. The department shall charge a fee of not more than \$10 to replace a lost or stolen certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 255, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 11, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(e), eff. Sept. 1, 2003.

Sec. 773.057. EMERGENCY MEDICAL SERVICES PROVIDERS LICENSE.

(a) An emergency medical services provider must submit an application for a license in accordance with procedures prescribed by the board.

(b) A nonrefundable application and vehicle fee determined by the board must accompany each application. The application fee may not exceed \$500 for each application and the vehicle fee may not exceed \$180 for each emergency medical services vehicle operated by the provider.

(c) The department may delegate vehicle inspections to the commissioners court of a county or the governing body of a municipality. The delegation must be made:

(1) at the request of the commissioners court or governing body; and

(2) in accordance with criteria and procedures adopted by the board.

(d) The commissioners court of a county or governing body of a municipality that conducts inspections under Subsection (c) shall collect and retain the fee for vehicles it inspects.

(e) In addition to any other qualifications that an emergency medical services provider must possess to obtain the type of license sought, all emergency medical services providers must possess the qualifications required for a basic emergency medical services provider under Section 773.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 256, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 12, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(f), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 6, eff. September 1, 2005.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 1, see other Sec. 773.0571.

Sec. 773.0571. REQUIREMENTS FOR PROVIDER LICENSE. The department shall issue to an emergency medical services provider applicant a license that is valid for two years if the department is satisfied that:

(1) the applicant has adequate staff to meet the staffing standards prescribed by this chapter and the rules adopted under this chapter;

(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

(3) the applicant offers safe and efficient services for emergency prehospital care and transportation of patients;

(4) the applicant:

(A) possesses sufficient professional experience and qualifications to provide emergency medical services; and

(B) has not been excluded from participation in the state Medicaid program;

(5) the applicant holds a letter of approval issued under Section 773.0573 by the governing body of the municipality or the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services, as applicable;

(6) the applicant employs a medical director; and

(7) the applicant complies with the rules adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 257, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 13, eff. Aug. 28, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(a), eff. September 1, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 1

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(a), see other Sec. 773.0571.

Sec. 773.0571. REQUIREMENTS FOR PROVIDER LICENSE. The department shall issue to an emergency medical services provider applicant a license that is valid for two years if the department is satisfied that:

(1) the applicant has adequate staff to meet the staffing standards prescribed by this chapter and the rules adopted under this chapter;



(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

(3) the applicant offers safe and efficient services for emergency prehospital care and transportation of patients;

(4) the applicant:

(A) possesses sufficient professional experience and qualifications to provide emergency medical services; and

(B) has not been excluded from participation in the state Medicaid program;

(5) the applicant holds a letter of approval issued under Section 773.0573 by the governing body of the municipality or the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services, as applicable; and

(6) the applicant complies with the rules adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 257, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 13, eff. Aug. 28, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 1, eff. September 1, 2013.

Sec. 773.05711. ADDITIONAL EMERGENCY MEDICAL SERVICES PROVIDER LICENSE REQUIREMENTS. (a) In addition to the requirements for obtaining or renewing an emergency medical services provider license under this subchapter, a person who applies for a license or for a renewal of a license must:

(1) provide the department with a letter of credit issued by a federally insured bank or savings institution in the amount of:

(A) \$100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(B) \$75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(C) \$50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued; and

(D) \$25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(2) if the applicant participates in the medical assistance program operated under Chapter 32, Human Resources Code, the Medicaid managed care program operated under Chapter 533, Government Code, or the child health plan program operated under Chapter 62 of this code, provide the Health and Human Services Commission with a surety bond in the amount of \$50,000; and

(3) submit for approval by the department the name and contact information of the provider's administrator of record who satisfies the requirements under Section 773.05712.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.

Sec. 773.05712. ADMINISTRATOR OF RECORD. (a) The administrator of record for an emergency medical services provider licensed under this subchapter:

(1) may not be employed or otherwise compensated by another private for-profit emergency medical services provider;

(2) must meet the qualifications required for an emergency medical technician or other health care professional license or certification issued by this state; and

(3) must submit to a criminal history record check at the applicant's expense.

(b) Section 773.0415 does not apply to information an administrator of record is required to provide under this section.

(c) An administrator of record initially approved by the department may be required to complete an education course for new administrators of record. The executive commissioner shall recognize, prepare, or administer the education course for new administrators of record, which must include information about the laws and department rules that affect emergency medical services providers.

(d) An administrator of record approved by the department under

Section 773.05711(a) annually must complete at least eight hours of continuing education following initial approval. The executive commissioner shall recognize, prepare, or administer continuing education programs for administrators of record, which must include information about changes in law and department rules that affect emergency medical services providers.

(e) Subsection (a)(2) does not apply to an emergency medical services provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing emergency medical services.

(f) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.

Sec. 773.05713. REPORT TO LEGISLATURE. Not later than December 1 of each even-numbered year, the department shall electronically submit a report to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the house and senate with jurisdiction over the department on the effect of Sections 773.05711 and 773.05712 that includes:

(1) the total number of applications for emergency medical services provider licenses submitted to the department and the number of applications for which licenses were issued or licenses were denied by the department;

(2) the number of emergency medical services provider licenses that were suspended or revoked by the department for violations of those sections and a description of the types of violations that led to the license suspension or revocation;

(3) the number of occurrences and types of fraud committed by licensed emergency medical services providers related to those sections;

(4) the number of complaints made against licensed emergency medical services providers for violations of those sections and a description of the types of complaints; and

(5) the status of any coordination efforts of the

department and the Texas Medical Board related to those sections.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.

Sec. 773.0572. PROVISIONAL LICENSES. The board by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section. A nonrefundable fee of not more than \$30 must accompany each application for a provisional license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 258, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 14, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(g), eff. Sept. 1, 2003.

Sec. 773.0573. LETTER OF APPROVAL FROM LOCAL GOVERNMENTAL ENTITY. (a) An emergency medical services provider applicant must obtain a letter of approval from:

(1) the governing body of the municipality in which the applicant is located and is applying to provide emergency medical services; or

(2) if the applicant is not located in a municipality, the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services.

(b) A governing body of a municipality or a commissioners court of a county may issue a letter of approval to an emergency medical services provider applicant who is applying to provide emergency medical services in the municipality or county only if the governing body or commissioners court determines that:

(1) the addition of another licensed emergency medical services provider will not interfere with or adversely affect the

provision of emergency medical services by the licensed emergency medical services providers operating in the municipality or county;

(2) the addition of another licensed emergency medical services provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed emergency medical services providers operating in the municipality or county; and

(3) the addition of another licensed emergency medical services provider will not cause an oversupply of licensed emergency medical services providers in the municipality or county.

(c) An emergency medical services provider is prohibited from expanding operations to or stationing any emergency medical services vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this section until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(1) a contract awarded by another municipality or county for the provision of emergency medical services;

(2) an emergency response made in connection with an existing mutual aid agreement; or

(3) an activation of a statewide emergency or disaster response by the department.

(d) This section does not apply to:

(1) renewal of an emergency medical services provider license; or

(2) a municipality, county, emergency services district, hospital, or emergency medical services volunteer provider organization in this state that applies for an emergency medical services provider license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 3, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(c), eff. September 1, 2013.

Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual who is an emergency medical services volunteer is exempt from the payment of fees under Section 773.055 if the individual does not receive compensation for providing emergency medical services. If an

individual accepts compensation during the certification period, the individual shall pay to the department a prorated application fee for the duration of the certification period. In this section, "compensation" does not include reimbursement for actual expenses for medical supplies, gasoline, clothing, meals, and insurance incurred in providing emergency medical services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 259, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 5, eff. Sept. 1, 1991.

Sec. 773.0581. PROVIDERS EXEMPT FROM FEES. (a) An emergency medical services provider is exempt from the payment of fees under this subchapter if the provider uses emergency medical services volunteers exclusively to provide emergency prehospital care. However, an emergency medical services provider is not disqualified from the exemption if the provider compensates physicians who provide medical supervision and not more than five full-time staff or their equivalent.

(b) This chapter does not prohibit an emergency medical services provider who uses volunteer emergency medical services personnel but has more than five paid staff from using the word "volunteer" in advertising if the organization is composed of at least 75 percent volunteer personnel.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 260, eff. Sept. 1, 1991.

Sec. 773.059. LATE RECERTIFICATION. (a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require certification until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally

required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may become certified by complying with the requirements and procedures, including the examination requirements, for an original certification.

(e) A person who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for certification.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(g) A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under Section 773.050 on the person's demobilization for one calendar year after the date of demobilization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 261, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 3, eff. May 23, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 19.05, eff. Sept. 1, 1999.

Sec. 773.060. DISPOSITION OF FUNDS. (a) The department shall account for all fees and other funds it receives under this chapter.

(b) The department shall deposit the fees and other funds in the state treasury to the credit of the bureau of emergency management fund. The fund may be used only to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.061. DISCIPLINARY ACTIONS. (a) For a violation of

this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew a license or certificate of or shall reprimand:

- (1) emergency medical services personnel;
- (2) a program instructor, examiner, or course coordinator;

and

- (3) an emergency medical services provider license holder.

(b) For a violation of this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew approval of a course or training program.

(c) For a violation of this chapter or a rule adopted under this chapter, the department may place on emergency suspension emergency medical services personnel.

(d) The department may place on probation a course or training program or a person, including emergency medical services personnel, an emergency medical services provider license holder, or a program instructor, examiner, or course coordinator, whose certificate, license, or approval is suspended. If a suspension is probated, the department may require the person or the sponsor of a course or training program, as applicable:

- (1) to report regularly to the department on matters that are the basis of the probation;
  - (2) to limit practice to the areas prescribed by the board;
- or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(e) Except as provided by Section 773.062, the procedures by which the department takes action under this section and the procedures by which that action is appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 262, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.06, eff. Sept. 1, 1999.

Sec. 773.0611. INSPECTIONS. (a) The department or its



representative may enter an emergency medical services vehicle or the premises of an emergency medical services provider's place of business at reasonable times to ensure compliance with this chapter and the rules adopted under this chapter.

(b) The department or its representative may conduct an unannounced inspection of a vehicle or a place of business if the department has reasonable cause to believe that a person is in violation of this chapter or a rule adopted under this chapter.

(c) The board shall adopt rules for unannounced inspections authorized under this section. The department or its representative shall perform unannounced inspections in accordance with those rules. An emergency medical services provider shall pay to the department a nonrefundable fee of not more than \$30 if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 263, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 15, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(h), eff. Sept. 1, 2003.

Sec. 773.0612. ACCESS TO RECORDS. (a) The department or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification or an applicant for a certification or license is considered to have given consent to a representative of the department entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 264, eff. Sept. 1, 1991.

Sec. 773.0613. INFORMATION REPORT TO DEPARTMENT. (a) An emergency medical services provider licensed under this chapter shall annually submit a report to the department containing information

relating to the number and types of runs the emergency medical services provider makes.

(b) The department shall adopt rules relating to the type of information an emergency medical services provider must provide under this section and the manner in which the information must be provided.

(c) The department shall post the information the department receives under Subsection (a) in summary form on the department's Internet website. The department may not post any health information that is made confidential by another statute.

Added by Acts 2003, 78th Leg., ch. 871, Sec. 1, eff. Sept. 1, 2003.

Sec. 773.0614. AUTHORITY TO REVOKE, SUSPEND, DISQUALIFY FOR, OR DENY CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL FOR CERTAIN CRIMINAL OFFENSES. (a) In addition to the grounds under Section 773.061, the commissioner may suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel.

(b) For purposes of Subsection (a), the department may not consider offenses for which points are assessed under Section 708.052, Transportation Code.

(c) A certificate holder's certificate shall be revoked if the certificate holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition for:

(1) an offense listed in Sections 3g(a)(1)(A) through (H), Article 42.12, Code of Criminal Procedure; or

(2) an offense, other than an offense described by Subdivision (1), committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 757 (H.B. 1476), Sec. 1, eff.

September 1, 2011.

Sec. 773.06141. SUSPENSION, REVOCATION, OR DENIAL OF EMERGENCY MEDICAL SERVICES PROVIDER LICENSE. (a) The commissioner may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense for which points are assigned under Section 708.052, Transportation Code;

(2) has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A) an offense listed in Sections 3g(a)(1)(A) through (H), Article 42.12, Code of Criminal Procedure; or

(B) an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

(3) has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter C, Chapter 531, Government Code.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 4, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(d), eff. September 1, 2013.

Sec. 773.0615. FACTORS CONSIDERED IN SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE. (a) In determining whether an offense directly relates to the duties and responsibilities of emergency medical services personnel under Section 773.0614(a), the commissioner shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring certification to engage in emergency medical services;
- (3) the extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of emergency medical services personnel.

(b) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, a crime the commissioner shall consider, in addition to the factors listed in Subsection (a):

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of community supervision or deferred adjudication; and
- (6) other evidence of the person's fitness, including letters of recommendation from:

- (A) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

- (B) the sheriff or chief of police in the community where the person resides; and

- (C) any other person in contact with the person.

(c) The applicant or certificate holder has the responsibility, to the extent possible, to obtain and provide to the commissioner the recommendations of the persons required by Subsection (b)(6).

(d) In addition to providing evidence related to the factors under Subsection (b), the applicant or certificate holder shall furnish proof in the form required by the department that the applicant or certificate holder has:

- (1) maintained a record of steady employment;
- (2) supported the applicant's or certificate holder's dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or certificate holder has been convicted, been placed on community supervision, or received deferred adjudication.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.

Sec. 773.0616. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT; GUIDELINES. (a) A proceeding before the commissioner to consider the issues under Section 773.0615 is governed by Chapter 2001, Government Code.

(b) The executive commissioner shall issue guidelines relating to the commissioner's decision-making under Sections 773.0614 and 773.0615. The guidelines must state the reasons a particular crime is considered to relate to emergency medical services personnel and include any other criterion that may affect the decisions of the commissioner.

(c) The executive commissioner shall file the guidelines with the secretary of state for publication in the Texas Register.

(d) The department annually shall issue any amendments to the guidelines.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.

Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the commissioner suspends or revokes a certification, denies a person a certificate, or denies the opportunity to be examined for a certificate under Section 773.0614, the commissioner shall notify the person in writing of:

- (1) the reason for the suspension, revocation, denial, or disqualification;
- (2) the review procedure provided by Subsection (b); and

(3) the earliest date the person may appeal the action of the commissioner.

(b) A person whose certificate has been suspended or revoked or who has been denied a certificate or the opportunity to take an examination and who has exhausted the person's administrative appeals may file an action in the district court in Travis County for review of the evidence presented to the commissioner and the decision of the commissioner.

(c) The petition for an action under Subsection (b) must be filed not later than the 30th day after the date the commissioner's decision is final.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.

Sec. 773.062. EMERGENCY SUSPENSION. (a) The bureau chief shall issue an emergency order to suspend a certificate or license issued under this chapter if the bureau chief has reasonable cause to believe that the conduct of any certificate or license holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the certificate or license holder. Notice must also be given to the sponsoring governmental entity if the holder is a provider exempt from payment of fees under Section 773.0581.

(c) The holder may request in writing a hearing on the emergency suspension. The department shall conduct the hearing not earlier than the 10th day or later than the 30th day after the date on which the request is received and may continue, modify, or rescind the suspension. The department hearing rules and Chapter 2001, Government Code govern the hearing and any appeal from a disciplinary action related to the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 265, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 773.063. CIVIL PENALTY. (a) The attorney general, a district attorney, or a county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted

under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed \$250 a day for each violation.

(c) Civil penalties recovered in a suit brought by the state at the department's request shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Civil penalties recovered in a suit brought by a local government shall be paid to the local government that brought the suit. A municipality or county is encouraged to use the amount of recovered penalties that exceed the cost of bringing suit to improve the delivery of emergency medical services in the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.064. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be an emergency medical technician-paramedic, emergency medical technician-intermediate, emergency medical technician, emergency care attendant, or licensed paramedic and the person does not hold an appropriate certificate issued by the department under this chapter. An offense under this subsection is a Class A misdemeanor.

(b) An emergency medical services provider commits an offense if the provider knowingly advertises or causes the advertisement of a false, misleading, or deceptive statement or representation concerning emergency medical services staffing, equipment, and vehicles. An offense under this subsection is a Class A misdemeanor.

(c) A person commits an offense if the person knowingly uses or permits to be used a vehicle that the person owns, operates, or controls to transport a sick or injured person unless the person is licensed as an emergency medical services provider by the department. An offense under this subsection is a Class A misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person transports a sick or injured person:

(1) to medical care as an individual citizen not ordinarily engaged in that activity;

(2) in a casualty situation that exceeds the basic vehicular capacity or capability of an emergency medical services provider; or

(3) as an emergency medical services provider in a vehicle for which a variance has been granted under Section 773.052.

(e) Venue for prosecution of an offense under this section is in the county in which the offense is alleged to have occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 266, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 435, Sec. 4, eff. Sept. 1, 1997.

Sec. 773.065. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against an emergency medical services provider or a course coordinator who violates this chapter or a rule adopted or an order issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) the emergency medical services provider's or course coordinator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the emergency medical services provider's or course coordinator's demonstrated good faith; and

(5) any other matter as justice may require.

(c) The penalty may not exceed \$7,500 for each violation. The board by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 16, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(i), eff. Sept. 1, 2003.

Sec. 773.066. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) An administrative penalty may be assessed only after an emergency medical services provider or course coordinator charged with a



violation is provided notice and given an opportunity to request a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding whether the emergency medical services provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider or course coordinator charged with the violation does not request a hearing, the commissioner shall determine whether the provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under Subsection (b) or (c) that a penalty is to be assessed against an emergency medical services provider or a course coordinator, the commissioner shall issue an order requiring that the emergency medical services provider or course coordinator pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the commissioner shall give written notice of the order to the emergency medical services provider or course coordinator.

(f) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 17, eff. Aug. 28, 1995.

Sec. 773.067. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which an order charging the emergency medical services provider or course coordinator with a penalty is final as provided by Chapter 2001, Government Code, the person charged shall:

- (1) pay the penalty in full;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the

amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(c) If the commissioner receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(f) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court

shall order that no penalty is owed.

(g) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.  
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 18, eff. Aug. 28, 1995.

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.

Sec. 773.070. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) to (d) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(22), eff. Sept. 1, 1993.

(e) The board may deny licensure or certification to an applicant who does not provide a complete set of the required fingerprints.

(f) to (i) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(22), eff. Sept. 1, 1993.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.  
Amended by Acts 1993, 73rd Leg., ch. 790, Sec. 46(17), eff. Sept. 1, 1993.

Sec. 773.071. FEES. (a) To the extent feasible, the board by rule shall set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.

(b) Subsection (a) does not apply to fees for which Section 773.059 prescribes the method for determining the amount of the fees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(j), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS**

Sec. 773.091. CONFIDENTIAL COMMUNICATIONS. (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs confidential communications or records concerning a patient regardless of when the patient received the services of emergency medical services personnel or a physician providing medical supervision.

(e) Notwithstanding Rule 501, Texas Rules of Evidence, the privilege of confidentiality may be claimed in any criminal, civil, or administrative proceeding and may be claimed by the patient or the emergency medical services personnel or physician acting on the

patient's behalf.

(f) If the emergency medical services personnel or physician claims the privilege of confidentiality on behalf of the patient, the authority to do so is presumed in the absence of evidence to the contrary.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. Nothing in this subsection shall be construed as requiring or permitting emergency services personnel to make a diagnosis.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.008, eff. Sept. 1, 2001.

Sec. 773.092. EXCEPTIONS. (a) Exceptions to the confidentiality or privilege in court or administrative proceedings exist:

(1) when proceedings are brought by the patient against emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider, and in any criminal proceeding or certification revocation or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider;

(2) when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information as provided by Section 773.093;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for emergency medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on the patient's behalf, if the patient is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) when the proceeding is a disciplinary investigation or proceeding against emergency medical services personnel conducted

under this chapter, provided that the department shall protect the identity of any patient whose medical records are examined, unless the patient is covered under Subdivision (1) or has submitted written consent to the release of the patient's emergency medical services records under Section 773.093; or

(6) when the proceeding is a criminal prosecution in which the patient is a victim, witness, or defendant.

(b) Information under Subdivision (4) is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction of the subject matter, pursuant to rules of procedure specified for the matter.

(c) Subdivision (5) does not authorize the release of confidential information to instigate or substantiate criminal charges against a patient.

(d) Confidential records or communications are not discoverable in a criminal proceeding until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. A determination that confidential records or communications are discoverable is not a determination as to the admissibility of the records or communications.

(e) Communications and records that are confidential under this section may be disclosed to:

(1) medical or law enforcement personnel if the emergency medical services personnel, the physician providing medical supervision, or the emergency medical services provider determines that there is a probability of imminent physical danger to any person or if there is a probability of immediate mental or emotional injury to the patient;

(2) governmental agencies if the disclosure is required or authorized by law;

(3) qualified persons to the extent necessary for management audits, financial audits, program evaluation, system improvement, or research, except that any report of the research, audit, or evaluation may not directly or indirectly identify a patient;

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093;

(5) the department for data collection or complaint

investigation;

(6) other emergency medical services personnel, other physicians, and other personnel under the direction of a physician who are participating in the diagnosis, evaluation, or treatment of a patient;

(7) individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 435, Sec. 6, eff. Sept. 1, 1997.

Sec. 773.093. CONSENT. (a) Consent for the release of confidential information must be in writing and signed by the patient, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs, an attorney ad litem appointed for the patient, or a personal representative if the patient is deceased. The written consent must specify:

(1) the information or records to be covered by the release;

(2) the reasons or purpose for the release; and

(3) the person to whom the information is to be released.

(b) The patient or other person authorized to consent may withdraw consent to the release of any information by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect any information disclosed before the date on which written notice of the withdrawal was received.

(c) A person who receives information made confidential by this chapter may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.094. INJUNCTION; DAMAGES. A person aggrieved by an unauthorized disclosure of communications or records that are confidential under this subchapter may petition the district court of

the county in which the person resides or, in the case of a nonresident of the state, a district court of Travis County for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person injured by an unauthorized disclosure of communications or records that are confidential under this subchapter may bring an action for damages.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.095. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 435, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 874, Sec. 6, eff. Sept. 1, 2001.

Sec. 773.096. IMMUNITY FOR COMMITTEE MEMBERS. A member of an organized committee under Section 773.095 is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.



Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

**SUBCHAPTER E. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS**

Sec. 773.111. LEGISLATIVE FINDINGS. (a) The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality.

(b) It is estimated that trauma costs more than \$63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than \$4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program.

(c) In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.081 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.112. DUTIES OF BOARD; RULES. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies. The board shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section.

(b) The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance.

(c) The rules must include:

- (1) prehospital care management guidelines for triage and transportation of trauma patients;
- (2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;
- (3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;
- (4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;
- (5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;
- (6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;
- (7) requirements for periodic performance evaluation of the system and its components; and
- (8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.082 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 623, Sec. 1, eff. Sept. 1, 1997.

Sec. 773.113. DUTIES OF BUREAU. (a) The bureau shall:

- (1) develop and monitor a statewide emergency medical services and trauma care system;
- (2) designate trauma facilities;
- (3) develop and maintain a trauma reporting and analysis system to:
  - (A) identify severely injured trauma patients at each health care facility in this state;
  - (B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and
  - (C) monitor trauma patient care in each health care

facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

(b) The bureau may grant an exception to a rule adopted under Section 773.112 if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.083 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.1135. DUTIES OF DEPARTMENT. The department shall develop performance measures for regional advisory councils in trauma service areas to:

(1) promote the provision of a minimum level of emergency medical services in a trauma service area in accordance with the rules adopted under Section 773.112;

(2) promote the provision of quality care and service by the emergency medical services and trauma care system in accordance with the rules adopted under Section 773.112; and

(3) maximize the accuracy of information provided by a regional advisory council to the department or bureau for increased council effectiveness.

Added by Acts 2003, 78th Leg., ch. 849, Sec. 1, eff. Sept. 1, 2003.

Sec. 773.114. SYSTEM REQUIREMENTS. (a) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a

license issued to the facility by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991.  
Redesignated from Health & Safety Code Sec. 773.084 by Acts 1991,  
72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.115. TRAUMA FACILITIES. (a) The bureau may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I and II trauma facilities and rules adopted by the board for level III and IV trauma facilities. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility, and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991.  
Redesignated from Health & Safety Code Sec. 773.085 by Acts 1991,  
72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts  
1997, 75th Leg., ch. 435, Sec. 8, eff. Sept. 1, 1997; Acts 2001,  
77th Leg., ch. 874, Sec. 7, eff. Sept. 1, 2001.

Sec. 773.116. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according

to the number of beds in the health care facility. The amount of the fee may not exceed:

- (1) \$5,000 for a Level I or II facility;
- (2) \$2,500 for a Level III facility; or
- (3) \$1,000 for a Level IV facility.

(c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(1).

(d) To the extent feasible, the board by rule shall set the fee in an amount necessary for the department to recover the cost directly related to designating trauma facilities under this subchapter.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.086 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(k), (1), eff. Sept. 1, 2003.

Sec. 773.117. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION.

(a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this subchapter.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.087 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 773.119. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to

consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.089 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.120. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.090 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.122. PAYMENTS FROM THE ACCOUNTS. (a) The commissioner, with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money in the accounts established under Sections 771.072(f) and 773.006 to fund county and regional emergency medical services, designated trauma facilities, and trauma care systems in accordance with this section.

(a-1) A grant recipient may not before the fourth anniversary

of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section 780.004(a) unless the grant recipient obtains the department's prior approval.

(b) The commissioner shall maintain a reserve of \$500,000 of money appropriated from the accounts for extraordinary emergencies.

(c) In any fiscal year the commissioner shall use 50 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(d) In any fiscal year, the commissioner may use not more than 20 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To

receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(e) In any fiscal year, the commissioner may use not more than three percent of the appropriated money from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted to fund the administrative costs of the bureau of emergency management of the department associated with administering the state emergency medical services program, the trauma program, and the accounts and to fund the costs of monitoring and providing technical assistance for those programs and the accounts.

(f) In any fiscal year, the commissioner shall use at least 27 percent of the appropriated money remaining from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted and the money from the accounts not otherwise distributed under this section to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department. The administrator of a designated facility may request a regional advisory council chairperson to petition the department for disbursement of funds to a designated trauma facility in the chairperson's trauma service area that has provided uncompensated trauma care. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(g) The department shall review the percentages for disbursement of funds in the accounts on an annual basis and shall



make recommendations for proposed changes to ensure that appropriate and fair funding is provided under this section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 16, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.07, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 1, eff. September 1, 2011.

Sec. 773.123. CONTROL OF EXPENDITURES FROM ACCOUNTS. Money distributed from the accounts established under Sections 771.072(f) and 773.006 shall be used in accordance with Section 773.122 on the authorization of the executive committee of the trauma service area regional advisory council.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 17, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.08, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 3, eff. Sept. 1, 2003.

Sec. 773.124. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the department, the department may not disburse money under Section 773.122 to a trauma service area regional advisory council, county, municipality, or local recipient that the department finds used money in violation of that section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 19.09, eff. Sept. 1, 1999.

**SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY  
MEDICAL SERVICES OPERATORS**

Sec. 773.141. DEFINITIONS. In this subchapter:

(1) "Emergency call" means a telephone call or other similar communication from a member of the public, as part of a 9-1-1

system or otherwise, made to obtain emergency medical services.

(2) "Emergency medical services operator" means a person who, as a volunteer or employee of a public agency, as that term is defined by Section 771.001, receives emergency calls.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.142. APPLICATION OF SUBCHAPTER. This subchapter does not apply to a physician or other licensed person who may provide medical information under law.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An emergency medical services operator may provide medical information to a member of the public during an emergency call if:

(1) the operator has successfully completed an emergency medical services operator training program and holds a certificate issued under Section 773.144; and

(2) the information provided substantially conforms to the protocol for delivery of the information adopted by the board under Section 773.145.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.144. TRAINING PROGRAMS. (a) The department may offer emergency medical services operator training programs and may approve training programs offered by other persons. The board by rule shall establish minimum standards for approval of training programs and certification and decertification of program instructors.

(b) The provider of an emergency medical services operator training program shall issue an emergency medical services operator certificate evidencing completion of the training program. The board by rule may require that, before issuance of the certificate, the operator successfully complete an examination administered by the

board, by the provider of the training program, or by another person.

(c) The board by rule may provide that a certificate issued under Subsection (b) expires at the end of a specified period not less than one year after the date on which the certificate is issued and may adopt requirements, including additional training or examination, for renewal of the certificate.

(d) The board by rule may adopt other requirements relating to emergency medical services operator training programs. The establishment of minimum standards under this section does not prohibit the entity that is employing or accepting the volunteer services of the emergency medical services operator from imposing additional training standards or procedures.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.145. MEDICAL INFORMATION. The board by rule shall adopt a protocol that must be used to provide medical information under Section 773.143. The protocol may include the use of a flash-card system or other similar system designed to make the information readily accessible to the emergency medical services operator in an understandable form.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.146. LIMITATION ON CIVIL LIABILITY. (a) An emergency medical services operator who holds a certificate under Section 773.144 is not liable for damages that arise from the provision of medical information according to the protocol adopted under Section 773.145 if the information is provided in good faith. This subsection does not apply to an act or omission of the operator that constitutes gross negligence, recklessness, or intentional misconduct. This subsection does not affect any liability imposed on a public agency for the conduct of the emergency medical services operator under Section 101.062, Civil Practice and Remedies Code.

(b) Section 101.062, Civil Practice and Remedies Code, governs the liability of a public agency the employees or volunteers of which provide medical information under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.147. FEES. (a) The board by rule may adopt fees for:

- (1) training programs provided by the board under Section 773.144; and
- (2) the approval of program instructors and of training programs offered by other persons.

(b) The fees adopted under this section may not exceed the amount necessary for the department to recover the cost of administering this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. PEDIATRIC EMERGENCY MEDICAL SERVICES**

Sec. 773.171. EMERGENCY MEDICAL SERVICES FOR CHILDREN PROGRAM.

(a) The emergency medical services for children program is in the bureau of emergency management.

(b) The department shall provide coordination and support for a statewide pediatric emergency services system.

(c) The department may solicit, receive, and spend funds it receives from the federal government and public or private sources to carry out the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993.

Sec. 773.173. DUTIES OF BOARD; RULES. (a) On the recommendation of the advisory committee, the board shall adopt minimum standards and objectives to implement a pediatric emergency services system, including rules that:

- (1) provide guidelines for categorization of a facility's pediatric capability;
- (2) provide for triage, transfer, and transportation policies for pediatric care;
- (3) establish guidelines for:
  - (A) prehospital care management for triage and transportation of a pediatric patient;

(B) prehospital and hospital equipment that is necessary and appropriate for the care of a pediatric patient;

(C) necessary pediatric emergency equipment and training in long-term care facilities; and

(D) an interhospital transfer system for a critically ill or injured pediatric patient; and

(4) provide for data collection and analysis.

(b) The board and the advisory committee shall consider guidelines endorsed by the American Academy of Pediatrics and the American College of Surgeons in recommending and adopting rules under this section.

(c) The bureau may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of persons served in the affected local pediatric emergency medical services system.

(d) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993.

#### **SUBCHAPTER H. EMERGENCY STROKE SERVICES**

Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.202. DEFINITIONS. In this subchapter:

(1) "Advisory council" means the advisory council established under Section 773.012.

(2) "Stroke committee" means the committee appointed under Section 773.203.

(3) "Stroke facility" means a health care facility that:

- (A) is capable of primary or comprehensive treatment of stroke victims;
- (B) is part of an emergency medical services and trauma care system as defined by Section 773.003;
- (C) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and
- (D) records patient treatment and outcomes.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.203. STROKE COMMITTEE. (a) The advisory council shall appoint a stroke committee to assist the advisory council in the development of a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke committee must include the following members:

- (1) a licensed physician appointed from a list of physicians eligible for accreditation in vascular neurology from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;
  - (2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide organization of radiologists;
  - (3) a neurosurgeon with stroke expertise;
  - (4) a member of the Texas Council on Cardiovascular Disease and Stroke who has expertise in stroke care;
  - (5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;
  - (6) a neuroscience registered nurse with stroke expertise;
- and
- (7) a volunteer member of a nonprofit organization specializing in stroke treatment, prevention, and education.

(c) Chapter 2110, Government Code, does not apply to the stroke committee.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.204. DUTIES OF STROKE COMMITTEE; DEVELOPMENT OF STROKE EMERGENCY TRANSPORT PLAN AND STROKE FACILITY CRITERIA. (a) The advisory council, with the assistance of the stroke committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke, shall develop a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke emergency transport plan must include:

(1) training requirements on stroke recognition and treatment, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;

(3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; and

(4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport.

(c) In developing the stroke emergency transport plan and stroke facility criteria, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as the Joint Commission on Accreditation of Healthcare Organizations.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.205. RULES. The executive commissioner may adopt rules regarding a statewide stroke emergency transport plan and stroke facility criteria based on recommendations from the advisory council.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

#### **CHAPTER 774. LOCAL PROVISION OF EMERGENCY MEDICAL SERVICES**

Sec. 774.001. MUTUAL ASSISTANCE AMONG MUNICIPALITIES AND COUNTIES IN PROVIDING EMERGENCY MEDICAL SERVICES. (a) On request, a

county shall provide emergency medical services for a municipality within that county or for a county bordering that county if:

(1) an agreement has been executed between the county and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the county receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the county providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

(b) On request, a municipality shall provide emergency medical services for the county in which that municipality is located or for a municipality located within 30 miles of that municipality if:

(1) an agreement has been executed between the municipality and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the municipality receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the municipality providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 774.002. EDUCATIONAL INCENTIVE PAY FOR EMERGENCY MEDICAL TECHNICIANS. (a) A municipality or other political subdivision that employs emergency medical technicians may pay educational incentive pay to employees holding certificates from the Texas Department of Health as emergency medical technicians.

(b) The educational incentive pay is in addition to any other form of compensation provided by law for emergency medical



technicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 774.003. EMERGENCY AMBULANCE SERVICE PROVIDED BY COUNTIES.

(a) The commissioners court of a county may provide for emergency ambulance service in the county, including the provision of necessary equipment, personnel, and maintenance for the service.

(b) In providing for the services authorized by Subsection (a), a commissioners court may enter into exclusive agreements with any municipality, hospital district, sheriff's office, fire department, private ambulance service, or other agency or entity that the commissioners court finds to be suitably organized to provide efficient emergency ambulance service in the county. The governing body of a municipality or hospital district in which emergency ambulance service is to be rendered must approve an agreement made with the commissioners court to provide that service in the municipality or hospital district.

(c) A commissioners court operating under this section may expend county funds to defray the expense of establishing, operating, and maintaining the emergency ambulance service in the county. The funds may be expended whether the service is provided directly by the county or by agreement with some other governmental agency or private entity.

(d) A commissioners court providing emergency ambulance service under this section shall establish reasonable fees for the service. The commissioners court or any other agency or entity performing the service may charge and collect the fees.

(e) A commissioners court may make special provisions for rendering emergency ambulance service to indigent persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 20, eff. Aug. 28, 1995.

Sec. 774.004. MUNICIPAL POLICE OFFICER RESPONSE ACCOMPANYING MUNICIPAL AMBULANCE RESPONSE OUTSIDE MUNICIPALITY. (a) This section applies to an agreement between two municipalities under Section 774.001(b) or between a county and a municipality under Section 774.001(b) or 774.003.

(b) The agreement may authorize police officers employed by the responding municipality to secure the scene of an emergency, accident, fire, or disaster to which the municipality's emergency ambulance service responds under the agreement.

Added by Acts 2005, 79th Leg., Ch. 479 (H.B. 233), Sec. 1, eff. June 17, 2005.

## **CHAPTER 775. EMERGENCY SERVICES DISTRICTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 775.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of emergency services commissioners.

(2) "District" means an emergency services district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.003. AUTHORIZATION. An emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and by this chapter to protect life and health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

### **SUBCHAPTER B. CREATION OF DISTRICT**

Sec. 775.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a

petition signed by at least 100 qualified voters who own taxable real property in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ County Emergency Services District No. \_\_\_\_\_," with the name of the county and the proper consecutive number inserted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ Emergency Services District No. \_\_\_\_\_." The name of each county must be inserted in the first blank, and the next available district number must be inserted into the second blank.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.013. CONTENTS OF PETITION. (a) The petition prescribed by Section 775.011 or 775.012 must show:

- (1) that the district is to be created and is to operate under Article III, Section 48-e, Texas Constitution, and Chapter 775;
- (2) the name of the proposed district;
- (3) the proposed district's boundaries as designated by metes and bounds or other sufficient legal description;
- (4) the services that the proposed district will provide;
- (5) that the creation of the proposed district complies with Sections 775.020 and 775.0205;
- (6) the mailing address of each petitioner; and

(7) the name of each municipality whose consent must be obtained under Section 775.014.

(a-1) A statement that the boundaries of the district are coextensive with the boundaries of another political subdivision, as those boundaries exist on a particular date, is a sufficient legal description for purposes of Subsection (a)(3).

(b) The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than \$150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 1, eff. June 16, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10.009, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 87 (S.B. 718), Sec. 1, eff. May 17, 2005.

Sec. 775.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY. (a) Before a district may be created that contains territory in a municipality's limits or extraterritorial jurisdiction, a written request to be included in the district must be presented to the municipality's governing body after the petition is filed under Section 775.015. Except as provided by Subsection (c), that territory may not be included in the district unless the municipality's governing body gives its written consent on or before the 60th day after the date on which the municipality receives the request.

(b) If the municipality's governing body does not consent to inclusion within the 60-day period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire control and emergency medical and ambulance services available. The petition

must be submitted to the governing body not later than the 90th day after the date on which the municipality receives the request under Subsection (a).

(c) If the municipality's governing body refuses or fails to act on the petition requesting fire protection and emergency medical and ambulance services within six months after the date on which the petition submitted under Subsection (b) is received, the governing body's refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, consent to include the industrial district must be obtained from the municipality's governing body in the same manner provided by this section for obtaining consent to include territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

(f) A governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given.

(g) This section does not apply if the proposed district contains territory in the unincorporated area of a county with a population of 3.3 million or more.

(h) The governing body of a municipality with a population of more than one million may negotiate with the commissioners court of a county with a population of less than 1.8 million that is the county in which the majority of the territory inside the municipality's corporate boundaries is located conditions under which the municipality will grant its consent to the inclusion of its extraterritorial jurisdiction in the district. The negotiated conditions may:

- (1) limit the district's ability to incur debt;
- (2) require the district to ensure that its equipment is compatible with the municipality's equipment; and

(3) require the district to enter into mutual aid agreements.

(i) A request submitted under this section to a municipality described by Subsection (h) must include:

(1) a copy of the petition submitted under Section 775.015; and

(2) a sufficient legal description of the portion of the municipality and its extraterritorial jurisdiction that would be included in the district territory.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 5, Sec. 1, eff. Feb. 28, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 53, eff. September 1, 2011.

Sec. 775.015. FILING OF PETITION AND NOTICE OF HEARING. (a) If the petition is in proper form, the county judge may receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall give notice of the hearing. The notice must state:

(1) that creation of a district is proposed;

(2) that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(3) the name of the proposed district;

(4) the district's boundaries as stated in the petition;

(5) the place, date, and time of the hearing; and

(6) that each person who has an interest in the creation of the district may attend the hearing and present grounds for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication as prescribed by Subsection (e).

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

- (1) be endorsed or attached to a copy of the notice;
- (2) show the execution of the notice;
- (3) specify each date on which the notice was posted or published; and
- (4) include a printed copy of the published notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.016. HEARING. (a) At the time and place set for the hearing or at a later date then set, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district, including any matters negotiated with a consenting municipality under Section 775.014(h), and may issue incidental orders it considers proper in relation to the issues before the commissioners court. The commissioners court may adjourn the hearing as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 886, Sec. 3, eff. Sept. 1, 2001.

Sec. 775.017. PETITION APPROVAL. (a) If after the hearing the commissioners court finds that creation of the district is feasible and will promote the public safety, welfare, health, and convenience

of persons residing in the proposed district, the commissioners court shall grant the petition, fix the district's boundaries, and impose any conditions negotiated under Section 775.014(h). If the proposed district, according to its boundaries stated in the petition, is located wholly in a county with a population of more than 3.3 million, the commissioners court may amend the petition to change the boundaries of the proposed district if the commissioners court finds the change is necessary or desirable. For the purposes of this provision, the population of the county is determined according to the most recent federal decennial census available at the time the petition is filed.

(b) If the proposed district will include territory in the municipal limits or extraterritorial jurisdiction of one or more municipalities, the commissioners court of the county in which the municipality is located must determine if the district would still meet the requirements prescribed by Subsection (a) if the territory in the municipality's limits or extraterritorial jurisdiction is excluded from the district. The commissioners court must make this finding for each municipality the territory of which will be included in the district.

(c) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 269, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 54, eff. September 1, 2011.

Sec. 775.018. ELECTION. (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the imposition of a tax not to exceed the rate allowed by Section 48-e, Article III, Texas Constitution. Any conditions negotiated under Section 775.014(h) must be included on the ballot.

(b) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.



(c) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(d) Subject to Section 4.003, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(e) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 270, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 294, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 496, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1140, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 1, eff. June 17, 2011.

## Sec. 775.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER.

(a) A district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of creating the district subject to any conditions negotiated under Section 775.014(h) and imposing a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 775.017 are favorable to the district's creation.

(c) Repealed by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991.

(d) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election for at least one year after the date of the official canvass of the most recent election concerning creation of the district. A subsequent election must be held in the same manner provided by this chapter for the original creation election.

(e) When a district is created, the commissioners court of each county in which the district is located shall enter in its minutes an order that reads substantially as follows:

Whereas, at an election held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in that part of \_\_\_\_\_ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into an emergency services district under state law; and

Whereas, at the election \_\_\_\_\_ votes were cast in favor of formation of the district and \_\_\_\_\_ votes were cast against formation; and

Whereas, the formation of the emergency services district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of \_\_\_\_\_ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into an emergency services district (or a portion thereof) under the name of \_\_\_\_\_, under

Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and has the powers vested by law in the district.

(f) Any conditions that were negotiated under Section 775.014(h) and included on the ballot must be included in the order entered under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.020. OVERLAPPING DISTRICTS LOCATED WHOLLY IN POPULOUS COUNTY. (a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, a district converted under this chapter, or a district converted under former Section 794.100, the most recently created district may not provide services in the overlapping territory that duplicate the services provided by the other district at the time the overlapping district was created.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 2, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 1204, Sec. 1.001, eff. Sept. 1, 2003.

Sec. 775.0205. OVERLAPPING DISTRICTS. (a) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, the most recently

created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g).

(b) If the territory in more than two districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

(d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) A person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

(e) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 2001, 77th Leg., ch. 1333, Sec. 3, eff. June 16, 2001.  
Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.002, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 2, eff. June 17, 2011.

Sec. 775.021. EXCLUSION OF TERRITORY LOCATED WITHIN OTHER TAXING AUTHORITY. (a) This section applies only to a district located in whole or in part in a county that:

- (1) borders the Gulf of Mexico; and
- (2) has a population of less than 1.5 million.

(b) The board of a district may exclude from the district the territory located within the boundaries of another taxing authority if the other taxing authority provides the same services to the territory as those provided by the district.

(c) The board, at its discretion, may hold a hearing to consider the exclusion of the territory.

(d) The board shall hold a hearing to consider the exclusion of the territory if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition submitted under this subsection must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.

(e) The board shall issue a notice of a hearing to be held under Subsection (c) or (d). The provisions of Section 775.015 relating to the procedure for issuing notice of a hearing to create the district apply to the notice for the hearing under this section. The notice must state:

- (1) the proposed new boundaries of the district or of the territory to be excluded;
- (2) the time and place of the hearing; and
- (3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(f) After the hearing the board either may order an election on the question of the exclusion of the territory or may declare by resolution the territory excluded from the district. However, the board may not declare the territory as excluded if the owners of at least three percent of the property located in the district protest the exclusion.

(g) If the board excludes the territory by resolution, the board shall state in the resolution the new boundaries of the district. The board shall file a copy of the resolution in the

office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the resolution in the county records. After the resolution is recorded, the excluded territory is no longer a part of the district.

(h) The board shall order an election on the question of exclusion if:

(1) the owners of at least three percent of the property located in the district protest the exclusion; or

(2) the board:

(A) despite the lack of a protest, refuses to exclude the territory; and

(B) after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

(i) Except as otherwise required by the Election Code, the election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the applicable provisions of this chapter relating to the original election to create the district.

(j) If a majority of the voters voting in the election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and stating the new boundaries of the district. The board shall file a copy of the order in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the order in the county records. After the order is recorded, the excluded territory is no longer a part of the district.

(k) If a majority of the voters voting in the election do not favor excluding the territory, the board may not act on a petition to exclude all or part of the territory until the first anniversary of the date of the most recent election to exclude the territory from the district.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(m) Territory excluded under this section is not released from the payment of its pro rata share of the district's indebtedness. The district shall continue to levy taxes each year on the excluded territory at the same rate levied on territory in the district until

the taxes collected from the excluded territory equal its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied exclusively to the payment of the excluded territory's pro rata share of the indebtedness. The owner of all or part of the excluded territory may pay in full, at any time, the owner's share of the pro rata share of the district's indebtedness.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 271, eff. Sept. 1, 1991.

Sec. 775.022. REMOVAL OF TERRITORY BY MUNICIPALITY. (a) If a municipality completes all other procedures necessary to annex territory in a district and if the municipality intends to remove the territory from the district and be the sole provider of emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the municipality shall send written notice of those facts to the board. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice. On receipt of the notice, the board shall immediately change its records to show that the territory has been disannexed from the district and shall cease to provide further services to the residents of that territory. This subsection does not require a municipality to remove from a district territory the municipality has annexed.

(b) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district including loans and lease-purchase agreements.

(c) If a municipality removes territory from a district that the municipality has annexed, the municipality shall compensate the district immediately after disannexation of the territory under Subsection (a) in an amount equal to the annexed territory's pro rata share of the district's bonded and other indebtedness as computed according to the formula in Subsection (e). The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the annexed territory's pro rata share of the district's bonded and other indebtedness.

(d) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section.

(e) The amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the annexation by a fraction the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation.

(f) For purposes of this section, total indebtedness includes loans and lease-purchase agreements but does not include:

(1) a loan or lease-purchase agreement the district enters into after the district receives notice of the municipality's intent to annex district territory; or

(2) any indebtedness attributed to any real or personal property that the district requires a municipality to purchase under Subsection (d).

Added by Acts 1991, 72nd Leg., ch. 620, Sec. 1, eff. June 16, 1991.  
Amended by Acts 1997, 75th Leg., ch. 392, Sec. 1, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 496, Sec. 4, eff. Sept. 1, 1999; Acts  
2003, 78th Leg., ch. 235, Sec. 2, eff. Sept. 1, 2003; Acts 2003,  
78th Leg., ch. 907, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th  
Leg., ch. 930, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. [1596](#)), Sec. 1, eff.  
September 1, 2013.

Sec. 775.0221. ARBITRATION REGARDING REMOVED TERRITORY. (a)  
The municipality and the district shall negotiate an agreement on the amount of compensation required under Section 775.022. If the municipality and the district cannot reach an agreement, the municipality and the district shall resolve the dispute using binding arbitration.

(b) A request for binding arbitration must be in writing and may not be made before the 60th day after the date the municipality



receives notice from the district regarding the amount of compensation required under Section 775.022.

(c) The municipality and the district must agree on the arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district is located. The municipality and the district must agree on the appointment of an arbitrator included in the list. If the municipality and the district cannot agree on the arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(d) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before the date of the hearing.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh

day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) The municipality and the district shall share the cost of arbitration.

Added by Acts 2003, 78th Leg., ch. 235, Sec. 3, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 907, Sec. 2, eff. Sept. 1, 2003.

Sec. 775.0235. REMOVAL OF CERTAIN TERRITORY ON REQUEST OF MUNICIPALITY. (a) The board shall remove territory from a district as provided by this section, on request of a municipality, if the territory:

(1) was included in the corporate limits of the municipality at the time the territory was first included in the district;

(2) is included in any part of a district that is composed of two or more territories that are not contiguous to each other; and

(3) is surrounded on at least three sides by territory inside the municipal boundaries of a municipality with a population of 400,000 or more.

(b) The board shall, on request of the municipality, immediately disannex the territory from the district and shall cease to provide further services to the residents of that territory.

(c) On request by the municipality, in connection with a disannexation under Subsection (b), the board shall immediately disannex all territory in the district that is included in the municipality's extraterritorial jurisdiction and shall cease to provide further services to the residents of such additional territory.

(d) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(e) If territory is disannexed under this section, the municipality shall compensate the district in an amount equal to the disannexed territory's pro rata share of the district's indebtedness at the time the territory is disannexed. The district shall apply

compensation received from a municipality under this subsection exclusively to the payment of the disannexed territory's pro rata share of the district's indebtedness.

(f) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section. If any part of the indebtedness for which the district receives compensation under Subsection (e) was for the purchase of the real or personal property that the municipality purchases under this subsection, the fair market value of that property for the purpose of this subsection is reduced by a percentage equal to the disannexed territory's pro rata share under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.024. CONSOLIDATION OF EMERGENCY SERVICES DISTRICTS.

(a) Two or more emergency services districts may consolidate into a single emergency services district as provided by this section. Before consolidating, the board of each district must:

- (1) determine that consolidation would allow the districts to provide services more economically and efficiently; and
- (2) adopt a joint order of consolidation that includes:
  - (A) the name and proposed territory of the consolidated district;
  - (B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;
  - (C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and
  - (D) a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose.

(b) The boards shall agree on a name for the proposed consolidated district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms

appropriately.

(c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) The ballot for the election to approve a consolidation shall be printed to permit voting for or against the proposition: "The consolidation of the \_\_\_\_\_ (insert district names) to create the \_\_\_\_\_ (insert name of proposed district), which assumes all outstanding debts of the existing districts." The ballot shall include a proposition for an election required under Section 775.0241, if applicable.

(e) If a majority of the voters voting in at least two of the districts proposed to be consolidated favor the consolidation, the consolidated district is created and is composed of the districts that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation, that district is not part of any consolidated district.

(f) The consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

(g) The consolidated district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.

(h) For a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidated

district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. After an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

Added by Acts 2005, 79th Leg., Ch. 1101 (H.B. 2235), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 3, eff. June 17, 2011.

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.

(c) If the districts have different sales and use tax rates, the board of the consolidated district shall:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller by registered or certified mail:

(A) a copy of the joint order described by Section 775.024(a)(2); and

(B) a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 4, eff. June 17, 2011.

Sec. 775.025. EXCLUSION OF CERTAIN TERRITORY SUBJECT TO ASSESSMENTS. (a) The board shall hold a hearing to consider the exclusion from the district of territory in a planned community if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters residing in the territory proposed to be excluded from the district. A petition submitted under this subsection must describe the boundaries of the territory to be excluded from the district.

(b) The board shall give notice of a hearing under this section. The procedure under Section 775.015 for issuing notice of a hearing to create the district applies to the notice under this section. The notice must state:

- (1) the boundaries of the territory proposed to be excluded;
- (2) the time and place of the hearing; and
- (3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(c) After the hearing, if the board finds that the entity responsible for administering and collecting the ad valorem or annual variable budget based assessments in the territory to be excluded provides or contracts for the provision of substantially the same services as provided by the district, the board shall:

- (1) order an election on the question of exclusion; or
- (2) declare by resolution the territory excluded from the district.

(d) The board may not exclude territory by resolution if at least three percent of the qualified voters residing in the territory to be excluded from the district protest the exclusion in writing at the hearing.

(e) In a resolution excluding territory, the board shall describe the new boundaries of the district.

(f) The board shall order an election in the territory proposed to be excluded on the question of exclusion if:

(1) at least three percent of the qualified voters residing in the territory to be excluded protest the exclusion in writing at the hearing; or

(2) the board:

(A) despite the lack of a sufficient protest, refuses to exclude the territory; and

(B) not later than the 90th day after refusing to exclude the territory, receives a petition requesting an election that is signed by at least 10 percent of the qualified voters residing in the territory proposed to be excluded.

(g) Except as otherwise provided by the Election Code, the provisions of this chapter relating to the election creating the district apply to the election notice, the manner and time of giving the notice, and the manner of holding the election under this section.

(h) For purposes of the election, the order calling the election shall divide the territory proposed to be excluded from the district into one or more precincts.

(i) If a majority of the votes in an election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and describing the new boundaries of the district.

(j) The board shall file a copy of a resolution or order with the county clerk of each county in which the district is located. Each county clerk shall record the resolution or order. After the resolution or order is recorded, the excluded territory is no longer part of the district.

(k) If a majority of the votes in the election are against excluding the territory, the board may not act on a petition to exclude all or any part of the territory before the first anniversary of the date of the most recent election to exclude the territory.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations. The district shall continue to impose taxes each year on the excluded territory at the same rate imposed on other territory in the district until the

total amount of taxes collected from the excluded territory equals its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied only to the payment of the excluded territory's pro rata share of indebtedness. The owner of all or part of the excluded territory at any time may pay in full the owner's share of the excluded territory's pro rata share of the district's indebtedness at the time the territory was excluded.

(m) On or after the date on which the appropriate county clerk records the resolution or order excluding the territory from the district, the district or a fire department or ambulance service that contracts with the district is not required to provide to the excluded territory emergency service facilities, emergency services, or other services to protect the life and health of residents in the territory.

(n) For purposes of Subsection (o)(1), land ownership that is separated only by the claim of title by the state to the beds and banks of rivers or streams is considered contiguous. Land ownership that is separated by a farm-to-market road right-of-way, whether fee simple ownership or an easement, is not considered contiguous.

(o) In this section:

(1) "Planned community" means a planned community of 15,000 or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(A) located in a county adjacent to a county with a population of 2,800,000 or more according to the most recent federal census; and

(B) subject to restrictive covenants containing ad valorem or annual variable budget based assessments on real property for use in part to finance services of the same general type provided by the district.

(2) "Territory in a planned community" means territory that:

(A) on the effective date of this section comprises all or part of a planned community; or

(B) on the effective date of this section is contiguous to a planned community and later becomes part of that planned community.



Added by Acts 1997, 75th Leg., ch. 1424, Sec. 1, eff. June 20, 1997.  
Amended by:

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 1, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 2, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 3, eff. April 22, 2005.

Sec. 775.026. CONVERSION OF RURAL FIRE PREVENTION DISTRICTS TO EMERGENCY SERVICES DISTRICTS. (a) Each rural fire prevention district created under former Chapter 794 is converted to an emergency services district operating under this chapter.

(b) The name of a district converted under this section is changed to "\_\_\_ Emergency Services District No. \_\_\_," with the name of the county or counties in which the district is located and an appropriate number inserted to distinguish one district from another district.

(c) The emergency services district to which a rural fire prevention district converts assumes all obligations and outstanding indebtedness of the rural fire prevention district.

(d) A fire commissioner of a rural fire prevention district is an emergency services commissioner of the converted district on conversion of the district under this section and shall serve until the term for which the commissioner was appointed or elected expires.

Added by Acts 2003, 78th Leg., ch. 1204, Sec. 1.003, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 383 (S.B. 1435), Sec. 1, eff. September 1, 2005.

### **SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES**

Sec. 775.031. DISTRICT POWERS. (a) A district is a political subdivision of the state. To perform the functions of the district and to provide emergency services, a district may:

(1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;

- (2) enter into and perform necessary contracts;
- (3) appoint and employ necessary officers, agents, and employees;
- (4) sue and be sued;
- (5) impose and collect taxes as prescribed by this chapter;
- (6) accept and receive donations;
- (7) lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services;
- (8) construct, lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain emergency services vehicles and equipment;
- (9) contract with other entities, including other districts or municipalities, to make emergency services facilities and emergency services available to the district;
- (10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district;
- (11) borrow money; and
- (12) perform other acts necessary to carry out the intent of this chapter.

(b) A district located wholly within a county with a population of more than 3.3 million may not provide fire prevention or fire-fighting services unless the district:

- (1) was originally a rural fire prevention district and was converted to an emergency services district under this chapter or former Section 794.100; or
- (2) is created after September 1, 2003.

(b-1) A district that was formerly a rural fire prevention district that is not otherwise prohibited by statute from providing fire prevention or fire-fighting services may provide those services.

(c) A district may contract with the state or a political subdivision for law enforcement services or for enforcement of the district's fire code. A district may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, as a peace officer.

(d) A district is not required to perform all the functions authorized by this chapter. A district may be created to provide

limited services.

(e) In the event of a conflict between a power granted under this chapter and a condition imposed in accordance with Section 775.019(f), the condition controls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 272, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 392, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 496, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1204, Sec. 1.004, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 55, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 791 (S.B. [1425](#)), Sec. 1, eff. September 1, 2013.

Sec. 775.032. CERTAIN BUSINESSES NOT SUBJECT TO AD VALOREM TAX OR DISTRICT POWERS. (a) A business entity is not subject to the ad valorem tax authorized by this chapter or subject to the district's powers if the business entity:

(1) provides its own fire prevention and fire control services and owns or operates fire-fighting equipment or systems equivalent to or better than standards developed by the National Fire Protection Association or another nationally recognized association and for which the business entity receives the appropriate approval from the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas;

(2) provides and operates its own equipped industrial ambulance with a licensed driver and provides industrial victim care by an emergency care attendant trained to provide the equivalent of ordinary basic life support, as defined by Section 773.003; and

(3) provides ordinary emergency services for the business entity, such as emergency response, as defined by 29 C.F.R. Sec. 1910.120, rescue, disaster planning, or security services, as recognized by the Texas Industrial Emergency Services Board of the

State Firemen's and Fire Marshals' Association of Texas, and provides the equipment, training, and facilities necessary to safely handle emergencies and protect the business entity and its neighbors in the community.

(b) This section shall not be construed to exempt a business from a sales and use tax authorized by Section 775.0751.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 273, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1204, Sec. 1.005, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 558 (H.B. [1267](#)), Sec. 1, eff. September 1, 2005.

Sec. 775.033. LIABILITY OF DISTRICT. (a) A district is not liable for a claim arising from the act or omission of an employee or volunteer under an oral or written contract with the district if the act or omission:

- (1) is in the course and scope of the employee's or volunteer's duties for the district;
- (2) takes place during the provision of emergency services;
- (3) is not in violation of a statute or ordinance applicable to emergency action; and
- (4) is not wilful or wantonly negligent.

(b) This section does not expand the liability of a district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.034. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of emergency services commissioners to serve as the district's governing body. To serve as a member of the board a person must be:

- (1) at least 18 years of age; and
- (2) a resident citizen of the state and:
  - (A) a qualified voter within areas served by the district; or
  - (B) the owner of land subject to taxation in the

district.

(b) Except as prescribed by Subsection (c), commissioners serve two-year terms.

(c) After the votes are canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial emergency services commissioners to serve until January 1 of the year following the district election. On January 1, the court shall designate three of those emergency services commissioners to serve a two-year term and two of those emergency services commissioners to serve a one-year term.

(d) On January 1 of each year, the commissioners court shall appoint a successor for each emergency services commissioner whose term has expired.

(e) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term.

(f) A member of the board who, because of municipal annexation, is no longer a qualified voter of an area served by the district or no longer owns land subject to taxation by the district may continue to serve until the expiration of the member's term.

(g) The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.

(h) This section does not apply to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. [2653](#)), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 1, eff. September 1, 2013.

Sec. 775.0345. ELECTION OF BOARD IN CERTAIN COUNTIES. (a) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(b) The governing body of a district consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsections (h) and (h-1), emergency services commissioners serve four-year terms.

(b-1) Notwithstanding Subsection (b), the governing body of a district described by Subsection (a)(2) or (3) is governed by a five-member board of emergency services commissioners elected from single-member districts. One director is elected from each single-member district. As soon as possible after the district is created, the commissioners court of the county in which the district is located shall divide the district into five numbered single-member districts.

(c) After a district is created, the county judge shall establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(d) To be eligible to be a candidate for emergency services commissioner, a person must be at least 18 years of age and a resident of the district.

(d-1) Notwithstanding Subsection (d), to be eligible to be a candidate for emergency services commissioner in a single-member district on an initial board in a district described by Subsection (a)(2) or (3), a person must be at least 18 years of age and a resident of that single-member district.

(e) A candidate for emergency services commissioner on an initial board must give the voter registrar of the county a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. If the person intends to run for emergency services

commissioner in a single-member district in a district described by Subsection (a)(2) or (3), the notice must also specify the single-member district the person seeks to represent. On receipt of the notice, the voter registrar of the county shall have the candidate's name placed on the ballot.

(f) The voter registrar of the county shall appoint an election judge to certify the results of the election.

(g) After the election is held, the voter registrar or deputy registrar of the county shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse the county for the county's election costs.

(h) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h-1) Notwithstanding Subsection (h), the five initial emergency services commissioners elected from single-member districts in a district described by Subsection (a)(2) or (3) shall draw lots to determine which two commissioners serve terms that expire on December 31 of the second year following the year in which the election was held and which three commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(i) The board shall hold the general election for commissioner every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(j) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 1, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 3, eff. September 1, 2013.

Sec. 775.035. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) The governing body of a district located in more than one county consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsection (g), emergency services commissioners serve four-year terms.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(c) To be eligible to be a candidate for emergency services commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for emergency services commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. On receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The



two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h) The general election for commissioner shall be held every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(i) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 384 (S.B. 1437), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 2, eff. January 1, 2010.

Sec. 775.0355. DISQUALIFICATION OF EMERGENCY SERVICES COMMISSIONERS IN CERTAIN COUNTIES. (a) In this section, "emergency services organization" means:

- (1) a volunteer fire department;
- (2) a career or combination fire department;
- (3) a municipal fire department;
- (4) an emergency medical services organization under the jurisdiction of the Department of State Health Services;
- (5) any other agency under the jurisdiction of the state fire marshal's office; or
- (6) any other organization or corporation that governs an emergency services organization.

(b) This section applies only to a district located wholly in a county:

- (1) with a population of more than three million;
- (2) with a population of more than 200,000 that borders Lake Palestine; or
- (3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) A person is disqualified from serving as an emergency services commissioner if that person:

- (1) is related within the third degree of affinity or consanguinity to:
  - (A) a person providing professional services to the district;
  - (B) a commissioner of the same district; or
  - (C) a person who is an employee or volunteer of an emergency services organization providing emergency services to the district;
- (2) is an employee of a commissioner of the same district, attorney, or other person providing professional services to the district;
- (3) is serving as an attorney, consultant, or architect or in some other professional capacity for the district or an emergency services organization providing emergency services to the district; or
- (4) fails to maintain the qualifications required by law to serve as a commissioner.

(d) Any rights obtained by a third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of an emergency services commissioner to serve, provided that the third party had no knowledge, at the time the rights were obtained, of the fact that the commissioner was disqualified to serve.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. [2653](#)), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. [1265](#)), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. [1265](#)), Sec. 5, eff. September 1, 2013.

Sec. 775.036. POWERS AND DUTIES OF BOARD. (a) The board shall:

- (1) hold regular monthly meetings and other meetings as necessary;
- (2) keep minutes and records of its acts and proceedings;
- (3) give reports required by the state fire marshal, commissioner of health, and other authorized persons;
- (4) on a written request from the commissioners court of a county in which the district is located received on or before December 31, give a written report not later than February 1 of the following year to the commissioners court regarding the district's budget, tax rate, and debt service for the preceding fiscal year; and
- (5) administer the district in accordance with this chapter.

(b) The board may adopt and enforce a fire code, including fines for any violations, that does not conflict with a fire code adopted by any county that also contains within its boundaries any portion of the land contained in the district and may require inspections in the district relating to the causes and prevention of fires and medical emergencies, except as provided by Section 775.031(b). The fire code must be similar to standards adopted by a nationally recognized standards-making association. The board may not enforce the district's fire code within the boundaries of a municipality that has adopted a fire code, except for an area that has been annexed only for limited purposes in which the municipality does not enforce a fire code. The board of a district located wholly within a county with a population of three million or more may not adopt a fire code or a fine for a violation of the district's fire code unless the commissioners court of the county consents to the adoption of the code or fine.

(b-1) If a county that contains within its boundaries any portion of the land contained in the district adopts a fire code after the district adopts a code under Subsection (b), the board may continue to enforce its fire code in the area subject to the county fire code. To the extent of any conflict between the county's code and the district's code, the more stringent provision prevails.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 308, Sec. 4, eff. June 19, 2009.

(e) Chapter 551, Government Code, does not apply to a meeting of a committee:

(1) of the board if less than a board quorum attends; or

(2) composed of representatives of more than one board, if less than a quorum of any of the boards attends.

(f) Each January, the board shall publish the street address of the district's administrative office in eight-point type in the legal notices section of a newspaper of general circulation in the district. In a district's first year of operation, the board shall publish the notice not later than the 60th day after the date the initial board is appointed.

(g) The board may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, to inspect for fire hazards any structure, appurtenance, fixture, or other real property located in the district. The board may adopt procedures to order the owner or occupant of the property that fails an inspection to correct the hazardous situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 274, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 195, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 496, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. [527](#)), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. [527](#)), Sec. 4, eff. June 19, 2009.

Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as provided by Section 775.0363, the district may not regulate the sale, use, or transportation of fireworks.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. [917](#)), Sec. 5, eff. June 17, 2011.

Sec. 775.0363. REGULATION OF FIREWORKS. The district may adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154, Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 5, eff. June 17, 2011.

Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.

(b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.

(c) For purposes of Subsection (a), an emergency services commissioner may carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours.

(d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 6, eff. June 17, 2011.

Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.

(b) The board may contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) A person acting under a contract under this section,

including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

(d) Except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.

(g) A contract under this section is not a joint enterprise for liability purposes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. [917](#)), Sec. 6, eff. June 17, 2011.

Sec. 775.037. OFFICERS OF BOARD. (a) The emergency services commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed must determine the amount and sufficiency of the bond before it is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.038. COMPENSATION; CONFLICT OF INTEREST. (a) Except as provided by Subsection (b), an emergency services commissioner is entitled to receive compensation of not more than \$50 per day for each day the commissioner actually spends performing the duties of a commissioner. Compensation may not exceed \$3,000 per year. Commissioners may be reimbursed for reasonable and necessary expenses incurred in performing official duties.

(b) Instead of compensation under Subsection (a), a commissioner may elect to receive per diem compensation of \$50 for each day the commissioner actually spends performing the duties of a commissioner. A commissioner who receives per diem compensation may not be reimbursed for reasonable and necessary expenses. Per diem payments may not exceed \$3,000 per year.

(c) To receive compensation, per diem compensation, or reimbursement for expenses, a commissioner must file with the district a verified statement showing the number of days actually spent performing the duties of a commissioner and a general description of the duties performed for each day of service.

(d) Commissioners are subject to Chapter 171, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 3, eff. Sept. 1, 1997.

Sec. 775.039. DIFFERENTIAL PAY AND BENEFITS FOR EMPLOYEES OF EMERGENCY SERVICES DISTRICTS. (a) A board may provide differential pay to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty if:

(1) the board adopts a policy providing for differential pay for all similarly situated employees; and

(2) the employee's military pay is less than the employee's gross pay from the district.

(b) The combination of differential pay and military pay may not exceed the employee's actual gross pay from the district.

(c) For purposes of this section, military pay does not include money the employee receives:

- (1) for service in a combat zone;
- (2) as hardship pay; or
- (3) for being separated from the employee's family.

(d) The differential pay provided by Subsection (a) begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

(e) The board may extend the insurance benefits provided by the district to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty and to the employee's dependents. The extension period begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1097 (S.B. 1477), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.12, eff. September 1, 2013.

Sec. 775.040. FEES FOR PROVIDING SERVICES. A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 4, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 496, Sec. 9, eff. Sept. 1, 1999.

Sec. 775.041. FEE PAYMENT AND COLLECTION. (a) A fee imposed by a district under Section 775.040 must be paid within a reasonable amount of time as established by the district.

(b) If the fee has not been paid in the amount of time established by the district, the district may collect the fee by filing a complaint in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to collect the fee, it



may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district in the suit. The court shall determine the amount of the attorney's fees.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.

Sec. 775.042. REMOVAL OF BOARD MEMBER BY BOARD. (a) A board may remove a member if:

(1) the member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; and

(2) the other members of the board unanimously vote to remove that member.

(b) Not later than the 30th day after the date of a vote to remove a member under Subsection (a), that member may file a written appeal for reinstatement to the commissioners court of the county in which a single-county district is located or, if the district is located in more than one county, the commissioners court of the county where the member resides. The court may reinstate the member if it finds the removal unwarranted after considering:

(1) a reason for an absence;

(2) the time and place of a missed meeting;

(3) the business conducted at a missed meeting; and

(4) any other factors or circumstances the court considers relevant.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 3, eff. June 19, 2009.

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT. (a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) This section applies only to an appointed board member.

This section does not apply to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a board member for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code; or

(3) misconduct, as defined by Section 178.001, Local Government Code.

(b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Not later than the 30th day before the date on which the hearing is held, a commissioners court seeking removal under this section must:

(1) notify the board members that it is considering that action; and

(2) provide the board member with an opportunity to show cause why the board member should not be removed.

(d) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 1, eff. May 21, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 2, eff. May 21, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 8, eff. June 17, 2011.

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code;

(3) intoxication, as described by Section 87.013, Local Government Code; or

(4) misconduct, as defined by Section 178.001, Local Government Code.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. [917](#)), Sec. 9, eff. June 17, 2011.

Sec. 775.043. EXEMPTION FROM INVESTMENT TRAINING. (a) Section 2256.008, Government Code, does not apply to an officer or employee of a district created under this chapter.

(b) A district may invest funds only in the authorized investments set forth under Government Code Section 2256.009 (obligations of, or guaranteed by governmental entities), 2256.010 (certificates of deposit and share certificates), or 2256.016 (investment pools), unless the treasurer, chief financial officer (if not the treasurer), and the investment officer of the district attend and successfully complete the training requirements under Section 2256.008, Government Code.

Added by Acts 1999, 76th Leg., ch. 914, Sec. 1, eff. June 18, 1999. Renumbered from Health & Safety Code Sec. 775.041 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(80), eff. Sept. 1, 2001.

Sec. 775.044. VACANCY ON BOARD OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Not later than the 90th day after a board vacancy

for a district located in more than one county occurs, the remaining board members shall appoint a person to fill the unexpired term.

(b) If the board has not filled the vacancy before the 91st day after the date of the vacancy, the commissioners court of the county where the previous board member resided shall appoint a person to fill the vacancy.

(c) A person appointed under this section must be eligible to serve under Section 775.035.

Added by Acts 2005, 79th Leg., Ch. 384 (S.B. [1437](#)), Sec. 2, eff. September 1, 2005.

Sec. 775.0445. VACANCY ON BOARD OF DISTRICT LOCATED IN CERTAIN COUNTIES. (a) In this section, "vacancy" means a vacancy in the office of director that occurs for any reason, including an office that is vacant because:

- (1) a director was disqualified under Section 775.0355; or
- (2) no candidate filed for election to the office.

(b) This section applies only to a district located wholly in a county:

- (1) with a population of more than three million;
- (2) with a population of more than 200,000 that borders Lake Palestine; or
- (3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) Not later than the 90th day after a board vacancy occurs, the remaining board members shall appoint a person to fill the unexpired term.

(d) A person appointed under this section must be eligible to serve under Section 775.0345.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. [2653](#)), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. [1265](#)), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. [1265](#)), Sec. 7, eff. September 1, 2013.

Sec. 775.045. APPLICABILITY OF CERTAIN LAWS. (a) Except as provided by Subsection (b), notwithstanding any other law:

(1) Section 1301.551(i), Occupations Code, applies to a district as if the district were a municipality; and

(2) Section 233.062, Local Government Code, applies to a district as if the district were in an unincorporated area of a county.

(b) Subsection (a) does not apply to a district:

(1) that before February 1, 2013, has adopted a fire code, fire code amendments, or other requirements in conflict with Subsection (a); and

(2) whose territory is located:

(A) in or adjacent to a general law municipality with a population of less than 4,000 that is served by a water control and improvement district governed by Chapter 51, Water Code; and

(B) in a county that has a population of more than one million and is adjacent to a county with a population of more than 420,000.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 2, eff. September 1, 2013.

#### **SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT**

Sec. 775.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The hearing may be held not earlier than the 31st day after the date on which the board issues the order.

(c) The secretary of the board shall give notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) The secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district for at least 15 days before the date of the hearing; and

(2) not later than the 16th day before the date on which the hearing will be held, publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the \_\_\_\_\_ Emergency Services District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the \_\_\_\_\_ Emergency Services District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the other provisions of this chapter relating to those matters to the extent that those provisions can be made applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.052. PETITION FOR DISSOLUTION; NOTICE OF HEARING.

(a) Before a district may be dissolved, the district's board must receive a petition signed by at least 10 percent of the registered voters in the district.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall give notice of the hearing. The notice must include:

- (1) the name of the district;
- (2) a description of the district's boundaries;
- (3) the proposal that the district be dissolved; and
- (4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.053. HEARING. (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.054. ELECTION TO CONFIRM DISSOLUTION. (a) On the granting of a petition to dissolve the district, the board shall order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the board grants the petition.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the \_\_\_\_\_ Emergency Services District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district in the boundaries of the old district may not be held for at least one year after dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.055. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a district, the board shall continue to control and administer the property, debts, and assets of the district until all funds are disposed of and all district debts are paid or settled.

(b) The board may not dispose of the district's assets except for due compensation unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's residents.

(c) After the board issues the dissolution order, the board shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

(g) After the district pays all its debts and disposes of all its assets and funds as prescribed by this section, the board shall



file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district. Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each emergency services commissioner is discharged from liability under the emergency services commissioner's bond on entry of the order prescribed by Subsection (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.056. TRANSFER OF TERRITORY BETWEEN DISTRICTS. (a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries.

(b) The changes in boundaries under this section do not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

(c) A district shall compensate the district that loses territory in an amount equal to that territory's pro rata share of the losing district's bonded and other indebtedness based on the unpaid principal balances and the actual property values at the time the changes in boundaries are made. The district that loses territory shall apply compensation received from the annexing district under this subsection exclusively to the payment of the annexed territory's pro rata share of the losing district's bonds or other debt.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 5, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 10, eff. June 17, 2011.

#### **SUBCHAPTER E. FINANCES AND BONDS**

Sec. 775.071. LIMITATION ON INDEBTEDNESS. (a) Except as

provided by Subsection (b), a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand and anticipated revenues for the year.

(b) This section does not apply to Sections 775.051, 775.072, 775.076, 775.077, 775.078, and 775.085.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1140, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.072. DEPOSITORIES. (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in a depository bank, except that the board:

(1) may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds.

(d) The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.073. EXPENDITURES. (a) Except as otherwise provided by this section, district funds may be disbursed only by check, draft, order, or other instrument that:

(1) is signed by at least a majority of the board's commissioners; or

(2) is signed by the treasurer and countersigned by the president.

(b) The board by resolution may allow a district employee who

has executed a bond in an amount equal to the amount required for the district treasurer to sign an instrument to disburse district funds. An expenditure of more than \$2,000 may not be paid unless the expenditure is presented to the board and the board approves the expenditure.

(c) The board may authorize the disbursement of district funds transferred by federal reserve wire system. The board by resolution may authorize wire transfers to accounts in the district's name or accounts not in the district's name.

(d) Any property, including an interest in property, purchased or leased using district funds, wholly or partly, must remain the property of the district, regardless of whether the property is used by a third party under a contract for services or otherwise, until:

(1) the property is sold to a third party following the procedures authorized under Section 263.003, 263.007, or 263.008, Local Government Code; or

(2) the property is disposed of in accordance with Subchapter J.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 816, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1107 (H.B. 3798), Sec. 1, eff. September 1, 2013.

Sec. 775.074. AD VALOREM TAX. (a) The board shall annually impose an ad valorem tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as the interest and principal come due and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and

interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of the ad valorem tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

(e) The board shall certify the ad valorem tax rate to the county tax assessor-collector, who is the assessor-collector for the district.

(f) Repealed by Acts 1999, 76th Leg. ch. 496, Sec. 14, eff. September 1, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 275, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. [917](#)), Sec. 11, eff. June 17, 2011.

Sec. 775.0745. ELECTION TO INCREASE TAX RATE. (a) If the board decides to increase the maximum tax rate of the district to any rate at or below the rate allowed by this chapter or Section 48-e, Article III, Texas Constitution, the board must order an election to authorize the increase. The proposition on the ballot must state the proposed maximum tax rate to be authorized at the election.

(b) The board shall give notice of the election as provided by Section 4.003, Election Code. The notice shall contain the information required by Section 4.004, Election Code.

(c) The election shall be held on the first uniform election date provided by the Election Code after the date of the board's order that allows sufficient time to comply with any requirements of law.

(d) If a majority of the votes cast in the election favor the increase in the maximum tax rate, the maximum tax rate for the

district is increased to the rate authorized by the election. The increase in the maximum tax rate does not apply to a tax year for which the board adopts a tax rate before the date of the election.

(e) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 3, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.007, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. [1621](#)), Sec. 2, eff. September 1, 2005.

Sec. 775.075. REDUCTION OF AD VALOREM TAX RATE. (a) The qualified voters of a district may petition in the manner provided by Sections 775.052 through 775.054 for dissolution of a district to reduce the ad valorem tax rate of the district.

(b) The petition must state the new tax rate desired by the voters.

(c) The tax rate may not be reduced below the rate needed to pay any outstanding bonded indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989.

Sec. 775.0751. SALES AND USE TAX. (a) A district may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752. The district may impose the tax at a rate from one-eighth of one percent to two percent in increments of one-eighth of one percent. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this section. The comptroller may make rules for the collection and administration of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a sales and use tax, the comptroller may by rule provide for

proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) Except as provided by Subsection (c-1), a district may not adopt a tax under this section or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(c-1) A district that otherwise would be precluded from adopting a sales and use tax under Subsection (c) may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752, if the board:

(1) excludes from the election and the applicability of any proposed sales and use tax any territory in the district where the sales and use tax is then at two percent; and

(2) not later than the 30th day after the date on which the board issues the election order, gives, for informational purposes, written or oral notice on the proposed imposition, increase, or abolition of the sales and use tax, including the reasons for the proposed change, to the commissioners court of each county in which the district is located.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the portion of the district in which the district sales and use tax will apply would exceed two percent at any location in that portion of the district, the election to adopt a sales and use tax or to increase the rate of the sales and use tax in the district under this subchapter has no effect.

(e) to (h) Expired.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 6, eff. Sept. 1,

2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1385 (S.B. 1502), Sec. 1, eff. June 15, 2007.

Sec. 775.0752. SALES AND USE TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish a district's sales and use tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by the board. The board shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the board to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent."

(d) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989.

Sec. 775.0753. SALES AND USE TAX EFFECTIVE DATE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) Except as provided by Section 775.0754, the provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. [3159](#)), Sec. 1, eff. September 1, 2013.

Sec. 775.0754. SALES AND USE TAX AGREEMENT WITH MUNICIPALITY AFTER ANNEXATION. (a) This section applies when:

(1) a municipality annexes for full purposes part of a district that imposes a sales and use tax; and

(2) the annexed area is not removed from the district.

(b) The municipality and the district may, before or after the annexation, agree on an allocation between the municipality and the district of revenue from the sales and use tax imposed in the annexed area.

(c) Under policies and procedures that the comptroller considers reasonable, the comptroller shall pay the amounts agreed to between the municipality and the district.

(d) A municipality that enters into an agreement under this section is not required to provide emergency services in that annexed territory. To the extent of a conflict between this subsection and Section 43.056, Local Government Code, or any other law, this subsection controls.

(e) Section 321.102(f), Tax Code, does not apply if the municipality and the district enter into an agreement under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. [3159](#)), Sec. 2,



eff. September 1, 2013.

Sec. 775.076. BONDS AND NOTES AUTHORIZED. (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers.

(a-1) Before the board may issue bonds or notes authorized by this section, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote. This subsection does not apply to a district located wholly in a county with a population of more than three million.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

- (1) ad valorem taxes;
- (2) all or part of the district's revenues, income, or receipts; or
- (3) a combination of those taxes, revenues, income, and receipts.

(c) The bonds and notes may be issued to mature in not more than 40 years from the date of their issuance.

(d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.

(e) to (g) Repealed by Acts 2001, 77th Leg., ch. 1140, Sec. 23(2), eff. Sept. 1, 2001.

(h) If provided by the resolution, the proceeds from the sale of the bonds or notes may be used for:

- (1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;
- (2) paying expenses of operation and maintenance of the facility;
- (3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and
- (4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until

needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for:

(1) all payments of principal, interest, and any other amounts required in connection with the bonds or notes; and

(2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall impose a tax as prescribed by Section 775.074 if the bonds or notes are payable wholly or partly from ad valorem taxes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 7, 23(2), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. [2653](#)), Sec. 5, eff. September 1, 2007.

Sec. 775.077. ELECTION TO APPROVE BONDS AND NOTES. (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election ordered for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least

once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

- (1) the amount of bonds or notes to be authorized; and
- (2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."

(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.078. BOND ANTICIPATION NOTES. (a) A district may issue bond anticipation notes from time to time to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may from time to time authorize the issuance of bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to payment of the notes will be sufficient to pay the principal of and interest on the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.082. AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) The county auditor of a county that contains any part of the district shall have access to the books, records, officials, and assets of the district.

(b) A district shall prepare and file with the commissioners court of each county that contains any part of the district on or before June 1 of each year an audit report of the district's fiscal accounts and records. The audit shall be performed and the report shall be prepared at the expense of the district. The county auditor, with the approval of the commissioners court, shall adopt rules relating to the format of the audit and report. If a district is located in more than one county, the county auditors, with the approval of the commissioners court of each county in which the district is located, shall adopt uniform rules relating to the format of the audit and report.

(c) The person who performs the audit and issues the report must be an independent certified public accountant or firm of certified public accountants licensed in this state, unless the commissioners court by order requires the audit to be performed by the county auditor at least 120 days before the end of the district's fiscal year.

(d) The commissioners court, on application made to the commissioners court by the district, may extend up to an additional 30 days the deadline for filing the audit report.

(e) If the district fails to complete and file the audit report within the time provided by Subsection (b) or (d), the commissioners court may order the county auditor to perform the audit and issue the report. If a district is located in more than one county, the commissioners court of each county in which the district is located shall designate by joint order a county auditor of one of the counties to perform the audit and issue the report.

(e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034.

(f) The district shall pay all costs incurred by the county auditor to perform an audit and issue the report required by this section, unless otherwise ordered by the commissioners court or by joint order of the commissioners courts, if the district is located in more than one county.

(g) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 1993, 73rd Leg., ch. 195, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 392, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 120 (S.B. 1436), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 12, eff. June 17, 2011.

Sec. 775.0821. ALTERNATIVE TO AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) This section applies only to a district to which Section 775.082 applies that:

(1) did not have any outstanding bonds or any outstanding liabilities having a term of more than one year during the previous fiscal year;

(2) did not receive more than a total of \$250,000 in gross receipts from operations, loans, taxes, or contributions during the previous fiscal year; and

(3) did not have a total of more than \$250,000 in cash and temporary investments during the previous fiscal year.

(b) Instead of filing an audit report under Section 775.082, a district to which this section applies may file compiled financial statements with the commissioners court of each county in which any part of the district is located.

(c) The district must file with the compiled financial statements an affidavit signed by an authorized district representative attesting to the accuracy and authenticity of the statements.

(d) The provisions of Section 775.082 relating to deadlines for filing an audit and the procedures and penalties relating to the failure of a district to file an audit apply to the filing of compiled financial statements under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 719 (H.B. 3764), Sec. 1, eff. September 1, 2013.

Sec. 775.0825. AUDIT OF DISTRICT IN CERTAIN POPULOUS COUNTIES.

(a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) A district shall prepare on or before July 1 of each year an audit of the district's fiscal accounts and records.

(c) The audit shall be performed and the report shall be prepared at the expense of the district.

(d) The audit shall be available for review and inspection at the administrative office of the district.

(e) A copy of the audit shall be filed with the clerk of the county commissioner's court within 30 days after receipt by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 8, eff. September 1, 2007.

Sec. 775.083. ANNUAL REPORT. (a) On or before January 1 of each year, a district shall file with the Texas Department of Rural Affairs an annual report that includes the following:

- (1) the district's name;
- (2) the name of each county in which the district is located;
- (3) the district's business address;
- (4) the name, mailing address, and term of office of each commissioner;
- (5) the name, mailing address, and term of office of the district's general manager, executive director, and fire chief;
- (6) the name of each legal counsel or other consultant for the district; and
- (7) the district's annual budget and tax rate for the preceding fiscal year.

(b) The Texas Department of Rural Affairs may not charge a fee for filing the report.

(c) The Texas Department of Rural Affairs shall develop and maintain an Internet-based system that enables:

(1) a district to securely file the report and update the district's information; and

(2) the public to view, in a searchable format, the reports filed by districts under this section.

(d) If the information included in a district's annual report changes, the district shall update the district's information using the Internet-based system before the end of the calendar quarter in which the district's information changes.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 6, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 235, Sec. 9, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 98, eff. September 1, 2009.

Sec. 775.084. COMPETITIVE BIDS. (a) Except as provided by Subsection (i), the board must submit to competitive bids an expenditure of more than \$50,000 for:

(1) one item or service; or

(2) more than one of the same or a similar type of item or service in a fiscal year.

(b) The board shall request bids on items to be purchased or leased or services to be performed as provided by this subsection. The board shall notify suppliers, vendors, or providers by advertising for bids or by providing at least three suppliers, vendors, or purchasers with written notice by mail of the intended purchase. If the board decides to advertise for bids, the advertisement must be published in accordance with Section 262.025(a), Local Government Code. If the board receives fewer than three bids in response to the advertisement, the board shall give written notice directly to at least three suppliers, vendors, or providers of the intended purchase. If three suppliers, vendors, or providers are not available or known to the board, the board shall give written notice by mail directly to each supplier, vendor, or provider known to the board.

(c) The advertisement or notice for competitive bidding must:

(1) describe the work to be performed or the item to be purchased or leased;

(2) state the location at which the bidding documents, plans, specifications, or other data may be examined; and

(3) state the time and place for submitting bids and the time and place that bids will be opened.

(d) The board may not prepare restrictive bid specifications.

(e) Bids may be opened only by the board at a public meeting or by a district officer or employee at or in a district office.

(f) The board may reject any bid. The board may not award a contract to a bidder who is not the lowest bidder unless, before the bid is awarded, the lowest bidder is given notice of the proposed award and an opportunity to appear before the board or its designated representative and present evidence concerning the bidder's responsibility.

(g) A contract awarded in violation of this section is void.

(h) This section applies to an expenditure of district tax revenues by any party or entity for the purchase of services, vehicles, equipment, or goods.

(i) This section does not apply to:

(1) the purchase or lease of real property;

(2) an item or service that the board determines can be obtained from only one source;

(3) a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services;

(4) an emergency expenditure;

(5) the purchase of vehicle fuel;

(6) the purchase of firefighter bunker gear;

(7) the purchase of insurance coverage; or

(8) repairs funded by a payment made under an insurance claim.

(j) Subsection (i) does not prohibit the board from soliciting competitive bids for any item, service, or contract listed in Subsection (i).

(k) A contract for a public works project must be administered in the manner provided by Subchapter B or H, Chapter 271, Local Government Code, except as provided by this section.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 7, eff. Sept. 1, 1997.



Amended by Acts 2003, 78th Leg., ch. 235, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1304 (H.B. 2957), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1248 (H.B. 2667), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 8, eff. September 1, 2007.

Sec. 775.085. LOAN FOR REAL PROPERTY OR EMERGENCY SERVICES EQUIPMENT. (a) The board, on the behalf of the district, may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other conditions the board considers advisable.

(b) To secure a loan under this section, the board may pledge:

- (1) tax revenues or funds on hand that are not otherwise pledged to pay a debt of the district; or
- (2) the real property acquired or improved or equipment acquired with the borrowed money.

(c) If tax revenues are pledged to pay a loan, the loan must mature not later than the:

- (1) 10th anniversary of the date the loan is made, if the loan is for equipment; or
- (2) 20th anniversary of the date the loan is made, if the loan is for real property.

(d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 13, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 13, eff. June 17, 2011.

**SUBCHAPTER F. FIRE MARSHAL**

Sec. 775.101. CREATION. (a) A district may create the office of district fire marshal if a county in which the district is located does not have a county fire marshal.

(b) The district shall appoint an individual to serve in the office of fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.102. TERM. The fire marshal serves a two-year term.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.103. BOND. The fire marshal shall post a bond in the amount required by the district and conditioned on the faithful and strict performance of the fire marshal's duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.104. CONFLICT OF INTEREST. The fire marshal may not:

(1) have a direct or indirect financial interest in the sale of fire-fighting equipment; or

(2) be engaged in the business of fire insurance.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.105. ADMINISTRATIVE SUPPORT. The district may provide facilities, equipment, transportation, employees, and other services and assistance to the fire marshal, including investigators.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.106. JURISDICTION. (a) Except as provided by Section 775.107 or 775.115, the fire marshal may not exercise the powers granted under this subchapter in:

(1) the territory of a municipality that has a municipal fire marshal; or

(2) the territory of a county that has a county fire marshal.

(b) This subchapter does not change or otherwise limit the authority of any state agency to prevent and extinguish forest and grass fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.107. TRANSFER OF JURISDICTION. (a) This section applies if:

(1) a county in which a district is located creates a county fire marshal under Subchapter B, Chapter 352, Local Government Code; or

(2) a municipality located in the district creates a municipal fire marshal.

(b) Not later than the 30th day after the creation of the county or municipal fire marshal, the jurisdiction of the district fire marshal in that county or municipality ceases. The new county or municipal fire marshal shall assume control over any pending investigations, court proceedings, or other matters being handled by the district fire marshal in the county or municipality.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.108. GENERAL POWERS AND DUTIES. The fire marshal shall:

(1) investigate the cause, origin, and circumstances of each fire that damages property;

(2) determine whether the fire was caused by negligent or intentional conduct; and

(3) enforce all state, county, and district orders and rules that relate to fires, explosions, or damages caused by a fire or an explosion.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.109. INVESTIGATIONS. (a) The fire marshal shall begin an investigation within 24 hours after notification of a fire. The 24-hour period does not include Sunday.

(b) The fire marshal may investigate attempted fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.110. INSPECTION. (a) The fire marshal may, at any time of day, enter and inspect:

- (1) property where a fire has occurred; and
- (2) property adjacent to where a fire occurred.

(b) The fire marshal shall conduct this inspection in a manner least inconvenient to any persons living on the property.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.111. INSPECTION FOR FIRE HAZARDS. (a) In this section, "fire hazard" means any of the following conditions that endanger the safety of a structure or its occupants and promote or cause fire or combustion:

- (1) the presence of a flammable substance;
- (2) a dangerous or dilapidated wall, ceiling, or other structural element;
- (3) improper lighting, heating, or other facilities;
- (4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring; or
- (5) dangerous storage.

(b) In the interest of safety and fire prevention, the fire marshal may inspect for fire hazards any structure, appurtenance, fixture, or real property located in the district and within 200 feet of a structure, appurtenance, or fixture. If the fire marshal determines the presence of a fire hazard, the fire marshal may order the owner or occupant of the premises to correct the hazardous situation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.112. RECORDS. The fire marshal shall keep a record of

each fire that the fire marshal is required to investigate. The record must include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.113. ADDITIONAL INVESTIGATION POWERS. (a) If the fire marshal determines that further investigation of a fire or of an attempt to set a fire is necessary, the fire marshal may:

- (1) subpoena witnesses to testify regarding the fire or attempt;
- (2) administer oaths to the witnesses;
- (3) take and preserve written statements, including statements under oath such as an affidavit or deposition; and
- (4) require the production of a document or item related to the investigation.

(b) As part of an investigation, the fire marshal may:

- (1) conduct an investigation or examination in private;
- (2) exclude a person who is not under examination; and
- (3) separate witnesses from each other until each witness is examined.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.114. INSURANCE. (a) An action taken by the fire marshal in the investigation of a fire does not affect the rights of a policyholder or of an insurer regarding a loss caused by the fire.

(b) The records of an investigation by the fire marshal relating to the detection, investigation, or prosecution of a crime may be admitted in evidence in the trial of a civil action unless those records are subject to an exception under Sections 552.108(a)(1) and (b)(1), Government Code.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.115. COOPERATION WITH OTHER FIRE MARSHALS. (a) The district fire marshal shall cooperate with the state fire marshal to

conduct:

- (1) fire prevention activities;
- (2) fire-fighting activities; and
- (3) fire investigations.

(b) The district fire marshal shall aid or conduct an investigation in a municipality or a county if requested by the municipality or the county.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.116. ENFORCEMENT. (a) The fire marshal shall file in court a complaint charging arson, attempted arson, conspiracy to defraud, or any other related crime against a person the fire marshal believes to be guilty.

(b) The fire marshal shall file charges in court against a witness who refuses to cooperate with the investigation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.117. SERVICE OF PROCESS. A constable or sheriff may serve process under this subchapter. The process must be signed by the fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.118. CRIMINAL PENALTY; CONTEMPT OF FIRE INVESTIGATION. (a) A person commits an offense if the person is a witness in connection with an investigation by the fire marshal and:

- (1) refuses to be sworn;
- (2) refuses to appear and testify; or
- (3) fails to produce to the fire marshal any document or item relating to an investigation under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$25.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.119. CRIMINAL PENALTY; FAILURE TO COMPLY WITH ORDER.

(a) An owner or occupant of real property who is subject to an order issued by the fire marshal commits an offense if the person fails to comply with the order.

(b) An offense under this section is a Class B misdemeanor.

(c) Each failure to comply with an order is a separate offense.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

#### SUBCHAPTER G. HAZARDOUS MATERIALS

Sec. 775.151. DEFINITIONS. In this subchapter:

(1) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended;

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S. C. Section 6901 et seq.), as amended;

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), as amended; or

(D) Chapter 361.

(2) "Responsible party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.152. HAZARDOUS MATERIALS SERVICE. A district may provide hazardous materials services, including a response to an incident involving hazardous material that has been:

(1) leaked, spilled, or otherwise released; or

(2) abandoned.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.153. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee to a responsible party for responding to a hazardous materials service call.

(b) An individual who is a responsible party does not have to pay the fee if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.154. EXEMPTION FOR GOVERNMENTAL ENTITIES. This subchapter does not apply to hazardous materials owned or possessed by a governmental entity.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

#### **SUBCHAPTER H. CHANGE IN BOUNDARIES OF DISTRICT WITH PLANNED COMMUNITY**

Sec. 775.201. DEFINITION. In this subchapter, "planned community" means a planned community of 25,000 or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(1) located wholly or partly in a county with a population of 2.8 million or more; and

(2) subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property for use



in part to finance services of the same general type provided by the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.202. AGREEMENT ON BOUNDARIES WITH PROPERTY OWNERS IN PLANNED COMMUNITY. (a) After a hearing, a district located wholly in a county with a population of 2.8 million or more may exclude territory by making changes in the district's boundaries in accordance with an agreement among the district and the owners of two-thirds or more in acreage and two-thirds or more in taxable value, according to the most recent certified county property tax rolls, of a defined area of territory of a planned community.

(b) The agreement must be in writing and describe:

- (1) the affected territory by metes and bounds, including the changes in the boundaries to be made;
- (2) the amount of any compensation to be paid to the district under Section 775.205;
- (3) the effective date for the changes in boundaries; and
- (4) any other applicable terms.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.203. NOTICE OF HEARING. (a) The board secretary shall give notice of the hearing.

(b) The notice must contain the time and place for the hearing and a description of the territory proposed to be excluded.

(c) The secretary shall:

- (1) post copies of the notice for at least 15 days before the date of the hearing in three public places in the district, one of which must be in the territory proposed to be excluded; and
- (2) not later than the 16th day before the date on which the hearing is held, publish the notice once in a newspaper of general circulation in each county in which the excluded territory is located.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff.

September 1, 2007.

Sec. 775.204. ADOPTION OF AGREEMENT AND APPROVAL OF EXCLUSION. After the hearing, if the board finds that the exclusion of the territory would be feasible and would benefit the district, the board shall by a resolution entered in its minutes:

- (1) adopt the agreement; and
- (2) approve the exclusion.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.205. EFFECT OF ADOPTION OF AGREEMENT AND APPROVAL OF EXCLUSION. (a) After adoption and approval under Section 775.204, the district's tax on the property in the excluded territory continues until all agreed compensation has been paid in full.

(b) The district shall apply the compensation received under this section toward the payment of the obligations described by Subsection (c).

(c) The agreement must provide for the excluded territory to compensate the district in an amount equal to the excluded territory's pro rata share of the outstanding and unpaid bonds, warrants, or other direct and indirect obligations, including loans and lease-purchase agreements and written funding assistance agreements of the district and any not-for-profit fire departments and ambulance agencies or associations, for the financing and payment for firefighting, emergency medical service and emergency rescue equipment, fire and ambulance stations, or similar long-term capital assets to serve the district.

(d) The excluded territory's pro rata share is the unpaid principal balances of the outstanding loans and other obligations enumerated by Subsection (c) multiplied by a fraction, the numerator of which is the taxable value of the property in the excluded territory and the denominator of which is the taxable value of the entire district, including the excluded territory. The taxable value calculated under this subsection for property in the excluded territory, including as part of the entire district, does not include any special appraisal or exemptions for the property.

(e) The agreement to compensate the district does not include the following expenses incurred by the district after the boundaries change:

- (1) expenses for district operations and maintenance; and
- (2) expenses for district services.

(f) The agreement to compensate the district is required regardless of whether the loans and other obligations are subject to non-appropriation by the district or termination by either party before payment in full of the unpaid principal balance.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.206. NO EFFECT ON OUTSTANDING OBLIGATIONS. A change in boundaries under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

#### **SUBCHAPTER I. DIVISION OF DISTRICT**

Sec. 775.221. AUTHORITY TO DIVIDE DISTRICT. The board of a district located wholly in one county with a population of 20,000 or less may create a new district by disannexing territory from the existing district and ordering a new district to be created in the disannexed territory in the manner provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.222. PETITION FOR DIVISION; NOTICE OF HEARING. (a) Before the existing district may be divided, the district's board must receive a petition for division signed by at least seven percent of the district's qualified voters or at least 100 of the district's qualified voters, whichever is the lesser number.

(b) A petition for division must include:

- (1) the name of the new district to be created; and

(2) a description of the territory proposed to be the new district's territory.

(c) On receipt of a petition in the proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(d) The board shall issue a notice of the hearing that includes:

- (1) the name of the proposed district;
- (2) a description of the proposed district's boundaries;

and

(3) the place, date, and time of the hearing on the petition.

(e) The board shall publish the notice in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. [2212](#)), Sec. 1, eff. June 19, 2009.

Sec. 775.223. HEARING ON DIVISION OF DISTRICT. (a) At the hearing on the petition for division of the existing district, the board shall consider the petition and each issue relating to the division of the district.

(b) Any interested person may appear before the board to support or oppose the division.

(c) If the board finds that the petition contains the number of signatures required under Section 775.222(a), the board shall approve the petition not later than the 10th day after the date of the hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. [2212](#)), Sec. 1, eff. June 19, 2009.

Sec. 775.224. APPEAL. A resident of the district or an owner of real or personal property located in the district may appeal the board's decision on the division of the district by filing an appeal in the district court in the county in which a district is located only on the basis that the board incorrectly tabulated the number of

signatures on the petition.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.225. ELECTION TO CONFIRM DIVISION. (a) On granting a petition to divide the district, the board shall order an election to be held in the territory of the proposed new district to confirm the division of the existing district.

(b) Notice of the election shall be given in the same manner as the notice of hearing under Section 775.222.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law.

(d) The ballot shall be printed to provide for voting for or against the proposition: "Dividing the \_\_\_\_\_ Emergency Services District to create a new emergency services district."

(e) If a majority of voters voting at the election vote to divide the district, the board shall order the division.

(f) If a majority of those voting at the election vote against dividing the existing district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

(g) The existing district and the new district each shall pay a pro rata share of the cost of an election held under this section, based on the assessed value of real property in each district subject to ad valorem taxation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.226. DIVISION ORDER. A board order to divide a district must:

(1) disannex the land of the new district from the existing district contingent on the approval of the creation of the new district at the election held under this subchapter;

(2) create the new district in accordance with this chapter;

(3) name the new district; and

(4) include the metes and bounds description of the territory of the new district and the existing district after disannexation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.227. ADMINISTRATION OF DISTRICTS AFTER DIVISION. (a) The existing board continues in existence to govern the territory of the existing district after disannexation.

(b) If the new district is located wholly in one county, the commissioners court shall appoint a board in the manner described by Section 775.034 not later than the 14th day after the date of the board order dividing the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.228. TAXATION FOR OUTSTANDING BONDED DEBT. The disannexation of territory from a district under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of that district. Property disannexed under this subchapter is not released from its pro rata share of any of the district's bonded indebtedness on the date of the disannexation, and the district may continue to tax property in the disannexed territory until that debt is paid as if the territory had not been disannexed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.229. FURTHER DIVISION PROHIBITED. Once a district has been divided under this subchapter, neither the existing district nor the new district may be divided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

**SUBCHAPTER J. SURPLUS AND SALVAGE PROPERTY**

Sec. 775.251. SALE AND DISPOSITION OF SURPLUS OR SALVAGE PROPERTY. (a) In this section:

(1) "Salvage property" means personal property, other than wastepaper, that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

(3) "Volunteer fire department" means an association that:

(A) operates firefighting equipment;

(B) is organized primarily to provide and actively provides firefighting services;

(C) does not pay its members compensation other than nominal compensation; and

(D) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of expenses.

(b) Notwithstanding other law, a district may sell surplus firefighting equipment, including equipment described by Sections 419.040 and 419.041, Government Code, to any volunteer fire department or district in this state for fair market value if the equipment:

(1) met the National Fire Protection Association Standards at the original time of purchase; and

(2) at the time of the sale:

(A) meets the National Fire Protection Association Standards in effect at the original time of purchase; or

(B) meets the National Fire Protection Association Standards in effect.

(c) A district may contract to supply surplus property to any volunteer fire department or district in this state at fair market value.

(d) A district may sell salvage property to any person in this state for fair market value. If a district is unable to sell the property for fair market value, the district may destroy or otherwise dispose of the property as worthless.

(e) The district may determine the fair market value of surplus

and salvage property sold under Subsections (b), (c), and (d).

Redesignated from Health and Safety Code, Subchapter I, Chapter 775 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(31), eff. September 1, 2011.

#### **SUBCHAPTER K. DISTRICTS IN CERTAIN COUNTIES**

Sec. 775.301. DEFINITION. In this subchapter, "commissioners court" means the commissioners court of a county that borders the United Mexican States, has a population of more than 800,000, and appoints a board of emergency services commissioners under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.302. APPLICABILITY. (a) This subchapter applies only to a district that is located wholly in a county that borders the United Mexican States, that has a population of more than 800,000, and for which the commissioners court appoints a board of emergency services commissioners under Section 775.034.

(b) This subchapter controls over a provision of this chapter or other law to the extent of a conflict.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.303. DELEGATION OR WAIVER BY COMMISSIONERS COURT. (a) The commissioners court may adopt a resolution to:

(1) delegate to the board of a district a duty assigned to the commissioners court under this subchapter that relates to that district; or

(2) waive a requirement in this subchapter that the commissioners court approve an action of a district.

(b) A resolution adopted under this section may apply to more than one board or district.

(c) The commissioners court may by resolution terminate the delegation of a duty or the waiver of an approval requirement.



Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.304. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) The commissioners court may establish policies and procedures the board must comply with when:

(1) constructing, purchasing, acquiring, contracting for, leasing, adding to, maintaining, operating, developing, regulating, selling, exchanging, or conveying real or personal property, a property right, equipment, goods, services, a facility, or a system to maintain a building or other facility or to provide a service to or required by the district; or

(2) providing services through and using public funds for a volunteer fire department or emergency service provider.

(b) The policies and procedures:

(1) may include requiring the board to submit to the commissioners court periodic reports on the district's compliance with the policies and procedures;

(2) must establish the types of transactions, including maximum dollar amounts, the board may make when conducting an activity described by Subsection (a) without the approval of the commissioners court, if any;

(3) must designate by name, title, or position a person in the county as the primary point of contact between the commissioners court and the board; and

(4) may not be established until the commissioners court consults with the board.

(c) This section does not authorize the commissioners court or the board to use real or personal property, a property right, equipment, a facility, or a system to provide a telecommunications service, advanced communications service, or information service as defined by 47 U.S.C. Section 153, or a video service as defined by Section 66.002, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.305. BUDGET. (a) The commissioners court shall

establish a schedule for a district to prepare an annual budget, tax rate calculations and notices, and a recommended tax rate and to submit the budget, calculations, notices, and recommendation to the commissioners court for final approval.

(b) The schedule must take into account requirements of this chapter, Chapter 26, Tax Code, and Section 21, Article VIII, Texas Constitution, applicable to adopting a district tax rate and provide the commissioners court a reasonable amount of time to review the submissions required under Subsection (a).

(c) The board shall:

(1) prepare an annual budget and submit the budget to the commissioners court for final approval according to the schedule established under this section; and

(2) submit to the commissioners court and the county auditor tax rate calculations and notices and a recommended tax rate according to the schedule established under this section.

(d) If the commissioners court does not approve or deny a budget submitted to the commissioners court under this section before the 31st day after the date the budget is submitted, the commissioners court is considered to have approved the budget.

(e) If the commissioners court does not approve or deny a tax rate recommended to the commissioners court under this section before the 31st day after the date the recommended tax rate is submitted, the commissioners court is considered to have approved the recommended tax rate and the recommended tax rate is the rate for the year in which the rate is recommended.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. [332](#)), Sec. 1, eff. September 1, 2013.

Sec. 775.306. BUSINESS PARTICIPATION. The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or competence and that unfairly discriminate against small businesses and businesses owned by members of a minority group or by women. These barriers may include

contracting procedures and contract specifications or conditions.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

#### CHAPTER 777. REGIONAL POISON CONTROL CENTERS

Sec. 777.001. REGIONAL POISON CONTROL CENTERS. (a) Six regional centers for poison control are designated as the regional poison control centers for the state as follows:

- (1) The University of Texas Medical Branch at Galveston;
- (2) the Dallas County Hospital District/North Texas Poison Center;
- (3) The University of Texas Health Science Center at San Antonio;
- (4) the University Medical Center of El Paso, El Paso County Hospital District;
- (5) the Texas Tech University Health Sciences Center at Amarillo; and
- (6) Scott and White Memorial Hospital, Temple, Texas.

(b) The poison control centers shall coordinate poison control activities within the designated health and human services regions for the state. The Commission on State Emergency Communications shall adopt rules designating the region for each poison control center. The Commission on State Emergency Communications may adopt rules permitting poison control centers to provide services for regions served by other poison control centers in this state as necessary to maximize efficient use of resources and provide appropriate services in each region.

(c) The Commission on State Emergency Communications may standardize the operations of and implement management controls to improve the efficiency of regional poison control centers.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 27.01, eff. September 28, 2011.

Sec. 777.002. TELEPHONE SERVICES. (a) A poison control center established by this chapter shall provide a 24-hour toll-free telephone referral and information service for the public and health care professionals according to the requirements of the American Association of Poison Control Centers.

(b) Each public safety answering point, as that term is defined by Section 771.001, shall have direct telephone access to at least one poison control center. Regional poison information services may be available directly from the center for the region or from another poison control center but shall be available through all 9-1-1 services in the region, as the term "9-1-1 service" is defined by Section 771.001. The 9-1-1 service calls pertaining to poisonings may be routed to a poison control answering site, if possible, if the routing does not adversely affect the immediate availability of poisoning management services.

(c) A poison control center shall ensure that poison control activities within the designated region meet the criteria established by the American Association of Poison Control Centers. A center may meet the criteria directly or may affiliate with other poison control centers or poison treatment facilities, if possible. A center shall ensure that treatment facilities and services are available within the region and shall identify and make available to the public and to appropriate health professionals information concerning analytical toxicology, emergency and critical care, and extracorporeal capabilities within the region.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 41, Sec. 2, eff. Sept. 1, 1997.

Sec. 777.003. COMMUNITY PROGRAMS AND ASSISTANCE. A poison control center shall provide:

(1) community education programs on poison prevention methods to inform the public, such as presentations to persons attending a primary or secondary school, a parent-teacher association meeting, an employee safety meeting at an industrial company, or other interested groups;

(2) information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications,

their compatibility and stability, and adverse drug reactions and interactions;

(3) professional and technical assistance to state agencies requesting toxicologic assistance; and

(4) consultation services concerning medical toxicology, for which a fee may be charged in an amount set by the institution in which the center is located to cover the costs of the service.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.004. STAFF. (a) A poison control center established under this chapter shall use physicians, pharmacists, nurses, other professionals, and support personnel trained in various aspects of toxicology and poison control and prevention.

(b) A poison control center shall make available resources, if possible, to accommodate persons who do not speak English.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.005. RESEARCH PROGRAMS. (a) A poison control center may conduct a toxicology poison treatment research program to improve treatments for poisoning victims and to reduce the severity of injuries from poisonings.

(b) A poison control center may accept grants or contributions from public or private sources to be used for research.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.006. INFORMATION AT BIRTH. The Commission on State Emergency Communications shall assist the regional poison control centers in providing informational packets on poison prevention to parents of newborns.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 5, eff. September 1, 2009.

Sec. 777.007. STATE LIABILITY. The state shall indemnify a poison control center and an employee of a poison control center under Chapter 104, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.008. COORDINATING COMMITTEE. (a) The coordinating committee on poison control shall coordinate the activities of the regional poison control centers designated under Section 777.001(a) and advise the Commission on State Emergency Communications.

(b) The committee is composed of:

(1) one public member appointed by the Commission on State Emergency Communications;

(2) six members who represent the six regional poison control centers, one appointed by the chief executive officer of each center;

(3) one member appointed by the commissioner of the Department of State Health Services; and

(4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission on State Emergency Communications.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.

Sec. 777.009. FUNDING. (a) The Commission on State Emergency Communications shall establish a program to award grants to fund the regional poison control centers.

(b) The Commission on State Emergency Communications shall adopt rules to establish criteria for awarding the grants. The rules must require the agency to consider:

(1) the need of the region based on population served for poison control services and the extent to which the grant would meet the identified need;

(2) the assurance of providing quality services;

(3) the availability of other funding sources;

(4) achieving or maintaining certification as a poison

control center with the American Association of Poison Control Centers;

(5) maintenance of effort; and

(6) the development or existence of telecommunications systems.

(c) The Commission on State Emergency Communications may approve grants according to commission rules. A grant awarded under this section is governed by Chapter 783, Government Code, and the rules adopted under that chapter.

(d) The Commission on State Emergency Communications may accept gifts or grants from any source for purposes of this chapter.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.

Sec. 777.010. OUT-OF-REGION SERVICES; SERVICES FOR PRIVATE ENTITIES. (a) On approval by and in coordination with the governor, the Commission on State Emergency Communications may enter into a contract for the provision of telephone referral and information services or any program or service described by Section 777.003 to any person, including:

(1) another state or a political subdivision of another state; and

(2) another country or a political subdivision of another country.

(b) The Commission on State Emergency Communications shall contract with one or more regional poison control centers to provide the services required under a contract entered into under Subsection (a). The commission may not enter into a contract under this subsection if, in the opinion of the commission, the regional poison control center's performance of the contract would result in a diminishment in the services provided in the region.

(c) A contract described by Subsection (a) must recover the cost of providing the services and may include a reasonable additional amount to support poison control center services in this state. Revenue from a contract described by Subsection (a) must be deposited to the credit of the regional poison control services

account.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 7, eff. September 1, 2009.

Sec. 777.011. REGIONAL POISON CONTROL SERVICES ACCOUNT. The regional poison control services account is an account in the general revenue fund. The account is composed of money deposited to the account under Section 777.010(c). Money in the account may be appropriated only to the Commission on State Emergency Communications:

- (1) for administration of and payment for contracts entered into under Section 777.010(b); and
- (2) to fund grants awarded under Section 777.009.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 8, eff. September 1, 2009.

Sec. 777.012. NUMBER AND LOCATION IDENTIFICATION SERVICE. (a) In this section:

(1) "Service provider" means an entity providing local exchange access lines to a service user and includes a business service user that provides residential facilities and owns or leases a public or private telephone switch used to provide telephone service to facility residents.

(2) "Service user" means a person that is provided local exchange access lines, or their equivalent.

(b) A service provider shall furnish to a poison control center for each call to an emergency line of the center the telephone number of the subscribers and the address associated with the number.

(c) Information furnished to a poison control center under this section is confidential and is not available for public inspection. Information contained in an address database used to provide the number or location identification information under this section is confidential and is not available for public inspection. The service



provider or a third party that maintains an address database is not liable to any person for the release of information furnished by the service provider or third party in providing number or location identification information under this section, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 33, eff. Sept. 1, 1999.

Sec. 777.013. COOPERATION AND COORDINATION WITH THE DEPARTMENT OF STATE HEALTH SERVICES. (a) The Department of State Health Services, on request of the Commission on State Emergency Communications, shall provide epidemiological support to the regional poison control centers under this chapter to:

- (1) maximize the use of data collected by the poison control network;
- (2) assist the regional poison control centers with quality control and quality assurance;
- (3) assist with research; and
- (4) coordinate poison control activities with other public health activities.

(b) Each regional poison control center shall provide the Department of State Health Services with access to all data and information collected by the regional poison control center for public health activities and epidemiological and toxicological investigations.

(c) The Commission on State Emergency Communications and the Department of State Health Services shall enter into a memorandum of understanding that delineates the responsibilities of each agency under this section and amend the memorandum of understanding as necessary to reflect the changes in those responsibilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 9, eff. September 1, 2009.

#### **CHAPTER 778. EMERGENCY MANAGEMENT ASSISTANCE COMPACT**

Sec. 778.001. EXECUTION OF INTERSTATE COMPACT. This state enacts the Emergency Management Assistance Compact and enters into the compact with all other states legally joining in the compact in

substantially the following form:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I--PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II--GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any

emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

#### ARTICLE III--PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized

representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### ARTICLE IV--LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of

the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

#### ARTICLE V--LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

#### ARTICLE VI--LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### ARTICLE VII--SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

#### ARTICLE VIII--COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that

state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

#### ARTICLE IX--REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

#### ARTICLE X--EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility

for the ultimate support of repatriation of such evacuees.

#### ARTICLE XI--IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

#### ARTICLE XII--VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

#### ARTICLE XIII--ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

Added by Acts 1997, 75th Leg., ch. 169, Sec. 1, eff. Sept. 1, 1997.

### **CHAPTER 779. AUTOMATED EXTERNAL DEFIBRILLATORS**

Sec. 779.001. DEFINITION. In this chapter, "automated external defibrillator" means a heart monitor and defibrillator that:

(1) has received approval from the United States Food and Drug Administration of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;

(2) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(3) on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.002. TRAINING. (a) A person or entity that acquires an automated external defibrillator shall ensure that:

(1) each user of the automated external defibrillator receives training given or approved by the Texas Department of Health in:

(A) cardiopulmonary resuscitation; and

(B) use of the automated external defibrillator; and

(2) a licensed physician is involved in the training program to ensure compliance with the requirements of this chapter.

(b) The Texas Department of Health shall adopt rules establishing the minimum requirements for the training required by this section. In adopting rules under this section, the Texas Department of Health shall consider the guidelines for automated external defibrillator training approved by the American Heart Association, the American Red Cross, or another nationally recognized association.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.003. MAINTENANCE OF AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that owns or leases an automated external defibrillator shall maintain and test the automated external defibrillator according to the manufacturer's guidelines.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.



Sec. 779.004. USING AN AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that provides emergency care to a person in cardiac arrest by using an automated external defibrillator shall promptly notify the local emergency medical services provider.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.005. NOTIFYING LOCAL EMERGENCY MEDICAL SERVICES PROVIDER. When a person or entity acquires an automated external defibrillator, the person or entity shall notify the local emergency medical services provider of the existence, location, and type of automated external defibrillator.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.006. LIABILITY EXEMPTION. The prescribing physician who authorizes the acquisition of an automated external defibrillator in accordance with this chapter, a person or entity that provides approved training in the use of an automated external defibrillator in accordance with this chapter, and the person or entity that acquires the automated external defibrillator and meets the requirements of this chapter are not liable for civil damages for such prescription, training, or acquisition unless the conduct is wilfully or wantonly negligent. Any person or entity that acquires an automated external defibrillator and negligently fails to comply with the requirements of this chapter is liable for civil damages caused by such negligence.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.007. POSSESSION OF AUTOMATED EXTERNAL DEFIBRILLATORS. Each person or entity, other than a licensed practitioner, that acquires an automated external defibrillator that has not been approved by the United States Food and Drug Administration for over-the-counter sale shall ensure that:

(1) the automated external defibrillator has been delivered to that person or entity by a licensed practitioner in the course of his professional practice or upon a prescription or other order

lawfully issued in the course of his professional practice; or

(2) if the automated external defibrillator is acquired for the purpose of sale or lease, the person or entity shall be in conformance with the applicable requirements found in Section 483.041, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 38 (H.B. 92), Sec. 1, eff. May 8, 2007.

Sec. 779.008. HOSPITAL EXEMPTION. This chapter shall not apply to hospitals licensed under Chapter 241, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 780. TRAUMA FACILITIES AND EMERGENCY MEDICAL SERVICES**

Sec. 780.001. DEFINITIONS. In this chapter:

(1) "Account" means the designated trauma facility and emergency medical services account established under Section 780.003.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 1, eff. September 1, 2005.

Sec. 780.002. DEPOSITS TO ACCOUNT. (a) On the first Monday of each month, the Department of Public Safety shall remit the surcharges collected during the previous month under the driver responsibility program operated by that department under Chapter 708, Transportation Code, to the comptroller.

(b) The comptroller shall deposit 49.5 percent of the money received under Subsection (a) to the credit of the account

established under this chapter and 49.5 percent of the money to the general revenue fund. The remaining one percent of the amount of the surcharges shall be deposited to the general revenue fund and may be appropriated only to the Department of Public Safety for administration of the driver responsibility program operated by that department under Chapter 708, Transportation Code.

(c) Notwithstanding Subsection (b), in any state fiscal year the comptroller shall deposit 49.5 percent of the surcharges collected under Chapter 708, Transportation Code, to the credit of the general revenue fund only until the total amount of the surcharges deposited to the credit of the general revenue fund under Subsection (b), and the state traffic fines deposited to the credit of that fund under Section 542.4031(g)(1), Transportation Code, equals \$250 million for that year. If in any state fiscal year the amount received by the comptroller under those laws for deposit to the credit of the general revenue fund exceeds \$250 million, the comptroller shall deposit the additional amount to the credit of the Texas mobility fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.05, eff. Jan. 11, 2004.

Sec. 780.003. ACCOUNT. (a) The designated trauma facility and emergency medical services account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to:

(1) the department for the purposes described by Section 780.004; or

(2) the Texas Higher Education Coordinating Board for graduate-level:

(A) medical education programs; or

(B) nursing education programs.

(b) The account is composed of money deposited to the credit of the account under Section 780.002, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 8, eff. June 14, 2013.

Sec. 780.004. PAYMENTS FROM THE ACCOUNT. (a) The commissioner:

(1) with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, may transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).

(a-1) A grant recipient may not before the fourth anniversary of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section 773.122(a) unless the grant recipient obtains the department's prior approval.

(b) In each fiscal year, the commissioner shall reserve \$500,000 of any money appropriated from the account for extraordinary emergencies. Money that is not spent in a fiscal year shall be transferred to the reserve for the following fiscal year.

(c) In any fiscal year, the commissioner shall use at least 96 percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department or an undesignated facility in active pursuit of designation. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(d) In any fiscal year, the commissioner shall use not more than two percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(e) In any fiscal year, the commissioner may use not more than one percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. A regional advisory council's share of money distributed under this section shall be based on the

relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(f) In any fiscal year, the commissioner may use not more than one percent of money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve, to fund the administrative costs of the bureau of emergency management of the department associated with administering the trauma program, the state emergency medical services program, and the account and to fund the costs of monitoring and providing technical assistance for those programs and that account.

(g) In a trauma service area that includes a county with a population of 3.3 million or more, a trauma service area regional advisory council may enter into an agreement with a regional council of governments to execute its responsibilities and functions under this chapter.

(h) For purposes of this section "pursuit of designation" means:

- (1) submission of an application with the state or appropriate agency for trauma verification and designation;
- (2) submission of data to the department trauma registry;
- (3) participation in trauma service area regional advisory council initiatives; and
- (4) creation of a hospital trauma performance committee.

(i) This subsection applies only to an undesignated facility that applies for trauma verification and designation after September 1, 2005, and is in active pursuit of designation. The facility must file a statement of intent to seek the designation, comply with Subsection (h) not later than the 180th day after the date the statement of intent is filed, and notify the department of the facility's compliance with that subsection. If trauma designation is not attained by an undesignated facility in active pursuit of designation on or before the second anniversary of the date the facility notified the department of the facility's compliance with

Subsection (h), any funds received by the undesignated facility for unreimbursed trauma services must be returned to the state.

(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse designated trauma hospitals under the program.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.14, eff. September 28, 2011.

Sec. 780.005. CONTROL OF EXPENDITURES FROM THE ACCOUNT. Money distributed under Section 780.004 shall be used in compliance with Section 780.004 on the authorization of the executive committee of the trauma service area regional advisory council.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 780.006. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the commissioner, the department may not disburse money under Section 780.004 to a county, municipality, or local recipient that the commissioner finds used money in violation of that section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

**CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 781.001. DEFINITIONS. In this chapter:

(1) "Alarm system" means electronic equipment and devices designed to act as a personal emergency response system.

(2) "Branch office" means an office that:

(A) is identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) is at a place other than the principal place of business as shown in department records.

(3) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Department" means the Department of State Health Services.

(5) "Manager" means an officer or supervisor of a corporation or a general partner of a partnership who manages a personal emergency response system provider.

(6) "Personal emergency response system" means an alarm system that is:

(A) installed in the residence of a person;

(B) monitored by an alarm systems company;

(C) designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and

(D) not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT**

Sec. 781.051. GENERAL POWERS AND DUTIES. (a) The department shall perform the functions and duties provided by this chapter.

(b) The commissioner shall adopt rules necessary to administer this chapter.

(c) The commissioner shall establish fees necessary to administer this chapter, including fees for processing and issuing or renewing a license or registration under this chapter.

(d) The commissioner shall prescribe forms required by this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff.



September 1, 2005.

### **SUBCHAPTER C. LICENSING**

Sec. 781.101. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER LICENSE REQUIRED. Unless the person holds a license issued under this chapter, a person may not act as or perform the services of a personal emergency response system provider.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.102. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER. A person acts as a personal emergency response system provider for the purposes of this chapter if the person sells, installs, services, monitors, or responds to a personal emergency response system.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.103. APPLICATION FOR LICENSE. An application for a license under this chapter must be in the form prescribed by the commissioner and include:

- (1) the full name and business address of the applicant;
- (2) the name under which the applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer, and director of the applicant, and of the applicant's manager;
- (5) a verified statement of the applicant's experience qualifications;
- (6) a report from the Department of Public Safety stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;
- (7) the social security number of the individual making the application; and
- (8) other information, evidence, statements, or documents

required by the department.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A license holder shall notify the department in writing of the establishment of a branch office and file in writing with the department the address of the branch office.

(b) On application by a license holder, the department shall issue a branch office license.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.105. FORM OF LICENSE. The commissioner shall prescribe the form of a license, including a branch office license. The license must include:

- (1) the name of the license holder;
- (2) the name under which the license holder is to operate;

and

- (3) the license number and the date the license was issued.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. (a) An applicant for a license or the applicant's manager must be at least 18 years of age and must not:

(1) have been convicted in any jurisdiction of a Class A misdemeanor or equivalent offense or a greater offense, unless a full pardon has been granted for reasons relating to a wrongful conviction;

(2) have been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense for which the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction;

(3) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(4) be suffering from habitual drunkenness or from narcotics addiction or dependence; or

(5) have been discharged from the United States armed forces under other than honorable conditions.

(b) The department may deny an application for a license if the applicant has been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.107. MANAGER REQUIRED. (a) A license holder's business shall be operated under the direction and control of one manager. A license holder may not apply to designate more than one individual to serve as manager of the license holder's business.

(b) An individual may not act as a manager until the individual has made a satisfactory showing to the department that the individual:

(1) satisfies the requirements of Section 781.106; and

(2) has not engaged in conduct regarding a violation or conviction that is grounds for disciplinary action under Section 781.351.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.108. INSURANCE. (a) A license holder shall maintain on file with the department at all times the certificate of insurance required by this chapter.

(b) The department shall immediately suspend the license of a license holder who violates Subsection (a).

(c) The department may rescind the license suspension if the license holder provides proof to the department that the insurance

coverage is still in effect. The license holder must provide the proof in a form satisfactory to the department not later than the 10th day after the date the license is suspended.

(d) After suspension of the license, the department may not reinstate the license until an application, in the form prescribed by the commissioner, is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performs a practice for which a license is required.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.109. INSURANCE REQUIREMENT. (a) The department may not issue a license unless the applicant files with the department:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any business licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

(1) \$100,000 for each occurrence for bodily injury and property damage;

(2) \$50,000 for each occurrence for personal injury; and

(3) a total aggregate amount of \$200,000 for all occurrences.

(d) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer

terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.110. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS. (a) A license holder or an employee of a license holder is not required to obtain an authorization, permit, franchise, or license from, pay another fee or franchise tax to, or post a bond in a municipality, county, or other political subdivision of this state to engage in business or perform a service authorized under this chapter.

(b) A municipality, county, or other political subdivision of this state may not require a payment for the use of municipal, county, or other public facilities in connection with a business or service provided by a license holder, except that a municipality may impose and collect:

(1) a reasonable charge for the use of a central alarm installation located in a police office that is owned, operated, or monitored by the municipality; and

(2) reasonable inspection and reinspection fees in connection with a device that causes at least five false alarms in a 12-month period.

(c) A municipality may require, until the device is repaired to the satisfaction of the appropriate municipal official, discontinuation of service of an alarm signal device that, because of mechanical malfunction or faulty equipment, causes at least five false alarms in a 12-month period.

(d) For the purposes of Subsection (c), a false alarm caused by human error or an act of God is not considered a mechanical malfunction or faulty equipment.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER D. REGISTRATION REQUIREMENTS**

Sec. 781.151. REGISTRATION REQUIRED. An individual must register with the department if the individual:

(1) is employed as an alarm systems company, alarm systems installer, manager or branch office manager, or security salesperson who enters a client's residence at any time while performing the salesperson's responsibilities; or

(2) is an owner, officer, partner, or shareholder of a license holder and is responsible for managing the business of the license holder.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.152. ALARM SYSTEMS INSTALLER. An individual acts as an alarm systems installer for purposes of this chapter if the individual installs, maintains, or repairs a personal emergency response system.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.153. ALARM SYSTEMS MONITOR. (a) An individual acts as an alarm systems monitor for purposes of this chapter if the individual monitors a personal emergency response system.

(b) This section does not apply to an individual employed exclusively and regularly by an employer, other than a license holder, in connection with the affairs of that employer and with whom the individual has an employee-employer relationship.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.154. SECURITY SALESPERSON. An individual acts as a security salesperson for purposes of this chapter if the individual:

(1) is employed by a security services contractor to sell services offered by the contractor; and

(2) enters a client's residence at any time during the person's employment.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff.

September 1, 2005.

Sec. 781.155. QUALIFICATIONS FOR REGISTRATION. (a) An individual must be at least 18 years of age to be registered.

(b) The department by rule may adopt additional qualifications for an individual to be registered under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.156. APPLICATION FOR REGISTRATION. (a) An application for registration must be verified and include:

(1) the applicant's full name, residence address, residence telephone number, date and place of birth, and social security number;

(2) a statement that:

(A) lists each name used by the applicant, other than the name by which the applicant is known at the time of application, and an explanation stating each place where each name was used, the date of each use, and a full explanation of the reasons the name was used; or

(B) states that the applicant has never used a name other than the name by which the applicant is known at the time of application;

(3) the name and address of the applicant's employer and, if applicable, the applicant's consulting firm;

(4) the date the employment commenced;

(5) a letter from the license holder requesting that the applicant be registered;

(6) the title of the position occupied by the applicant and a description of the applicant's duties; and

(7) any other information, evidence, statement, or document required by the department.

(b) The employer of the applicant shall make a reasonable attempt to verify the information required under Subsection (a)(1).

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

**SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS**

Sec. 781.201. CRIMINAL HISTORY CHECK. (a) The department shall conduct a criminal history check, including a check of any criminal history record information maintained by the Department of Public Safety, that relates to each applicant for a license or registration. An applicant is not eligible for a license or registration if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license or registration.

(b) A license or registration issued by the department is conditional on the department's receipt of criminal history record information.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL. Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the department or as otherwise required by state law or court order.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.203. FALSE REPRESENTATION. A person may not represent falsely that the person:

- (1) is employed by a license holder; or
- (2) is licensed or registered under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as provided by Subsection (b), a political subdivision may not offer alarm system sales, service, installation, or monitoring unless it



was providing monitoring services to residences within the boundaries of the political subdivision on September 1, 1999. Any fee charged by the political subdivision may not exceed the cost of the monitoring.

(b) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response of an alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(3) offer monitoring in connection with a criminal investigation; or

(4) offer monitoring to a financial institution, as defined by Section 201.101, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(c) The limitations of Subsection (a) do not apply to a political subdivision in a county with a population of less than 80,000 or to a political subdivision where monitoring is not otherwise provided or available.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER F. EXPIRATION; RENEWAL**

Sec. 781.251. EXPIRATION. (a) A license is valid for two years from the date of issuance. A license expires at midnight on the last day of the 23rd month after the month in which it is issued.

(b) Registration as a manager, branch office manager, alarm systems installer, or security salesperson expires on the second anniversary of the date of registration.

(c) Registration as an owner, officer, partner, or shareholder of a license holder expires on the second anniversary of the date of registration.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.252. LICENSE RENEWAL. (a) A person who is otherwise

eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for longer than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the department's records.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal may obtain a new license. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. The department by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date of a license is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that

portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION. Renewal of a license does not prohibit the bringing of a disciplinary proceeding for an act committed before the effective date of the renewal.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.256. EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS. A suspended license expires on the license's expiration date and may be renewed as provided by this chapter. The renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in conduct in violation of the order or judgment by which the license was suspended.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.257. REGISTRATION RENEWAL. (a) An individual who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required renewal fee to the department before the expiration date of the registration. An individual whose registration has expired may not engage in activities that require a registration until the registration has been renewed.

(b) An individual whose registration has been expired for 90 days or less may renew the registration by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) An individual whose registration has been expired for more than 90 days but less than one year may renew the registration by

paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) An individual whose registration has been expired for one year or more may not renew the registration. The individual may obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

(e) An individual who was registered in this state, moved to another state, and is currently registered and has been in practice in the other state for the two years preceding the date of application may obtain a new registration. The individual must pay to the department a fee that is equal to two times the normally required renewal fee for the registration.

(f) Not later than the 30th day before the expiration date of an individual's registration, the department shall send written notice of the impending expiration to the individual at the individual's last known address according to department records.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.258. CONTINUING EDUCATION. (a) The department may recognize, prepare, or administer continuing education programs for license holders and registrants. The department shall set the minimum number of hours that must be completed and the types of programs that may be offered.

(b) A license holder or registrant must participate in the programs to the extent required by the department to keep the person's license or registration. A license holder or registrant shall submit evidence of compliance with the department's continuing education requirements in a manner prescribed by the department.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER G. EXCEPTIONS**

Sec. 781.301. GOVERNMENT EMPLOYEES. This chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while the officer or employee is performing official duties.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.302. LAW ENFORCEMENT PERSONNEL. This chapter does not apply to:

(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.303. MEDICAL ALERT SERVICES. This chapter does not apply to an entity that is a hospital or a wholly owned subsidiary or an affiliate of a hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

**SUBCHAPTER H. DISCIPLINARY PROCEDURES**

Sec. 781.351. GROUND FOR DISCIPLINARY ACTION. (a) For a violation of this chapter or a rule adopted under this chapter, the department may:

- (1) revoke or suspend the person's license or registration;
- (2) place on probation the person if the person's license or registration has been suspended; or
- (3) reprimand the license holder or registrant.

(b) The department shall take disciplinary action described by Subsection (a) on proof:

- (1) that the applicant, license holder, or registrant has:
  - (A) violated this chapter or a department rule adopted under this chapter;
  - (B) been convicted of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of the conviction has occurred;
  - (C) engaged in fraud, deceit, or misrepresentation; or
  - (D) made a material misstatement in an application for or renewal of a license or registration; or
- (2) that the license holder of a registrant has submitted to the department sufficient evidence that the registrant:
  - (A) engaged in fraud or deceit while employed by the license holder; or
  - (B) committed theft while performing work as a registrant.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.352. HEARING. (a) If the department proposes to revoke or suspend a person's license or registration, the person is entitled to a hearing before a hearing officer appointed by the State Office of Administrative Hearings.

(b) The commissioner shall prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.353. ADMINISTRATIVE PROCEDURE. A proceeding under this chapter to suspend or revoke a license or registration is governed by Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.354. PROBATION. The department may require a person whose license or registration suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to areas prescribed by the department;  
or

(3) continue the person's professional education until the license or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Subject to expiration of the license under Section 781.251, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER I. ENFORCEMENT**

Sec. 781.401. INJUNCTION. The department shall prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.402. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the department, the attorney general may bring an action to recover a civil penalty authorized under this section.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.403. OFFENSE. (a) A person commits an offense if the person:

(1) knowingly falsifies fingerprints or photographs submitted to the department;

(2) contracts with or employs a person who is required to hold a license or registration under this chapter knowing that the person does not hold the required license or registration or who otherwise, at the time of contract or employment, is in violation of this chapter; or

(3) violates a provision of this chapter.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a Class A misdemeanor.

(d) An offense under Subsection (a)(3) is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter for failing to hold a license or registration that the person is required to hold under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.404. VENUE. An offense under this chapter may be prosecuted in Travis County or in the county in which the offense



occurred.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the department a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the department by order shall approve the determination and impose the recommended penalty.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.455. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff.

September 1, 2005.

Sec. 781.456. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the department's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the department's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.458. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.459. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

Sec. 781.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 9, eff. September 1, 2005.

#### **CHAPTER 782. REGIONAL EMERGENCY MEDICAL SERVICES**

Sec. 782.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1027 (H.B. 1623), Sec. 14, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1149 (S.B. 1119), Sec. 5, eff. September 1, 2007.

Sec. 782.002. REGIONAL TRAUMA ACCOUNT. (a) The regional trauma account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the commission to make distributions as provided by Section 782.003.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1149

(S.B. 1119), Sec. 5

(b) The account is composed of money deposited to the credit of the account under Section 707.008, Transportation Code, and the earnings of the account.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1027  
(H.B. 1623), Sec. 14

(b) The account is composed of money deposited to the credit of the account under Section 542.406, Transportation Code, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Added by Acts 2007, 80th Leg., R.S., Ch. 1027 (H.B. 1623), Sec. 14, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1149 (S.B. 1119), Sec. 5, eff. September 1, 2007.

Sec. 782.003. PAYMENTS FROM THE REGIONAL TRAUMA ACCOUNT.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1149  
(S.B. 1119), Sec. 5

(a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 707.008, Transportation Code.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1027  
(H.B. 1623), Sec. 14

(a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 542.406, Transportation Code.

(b) In any fiscal year, the commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

(c) The money under Subsection (b) shall be distributed in proportion to the amount deposited to the account from the local authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 1027 (H.B. 1623), Sec. 14, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1149 (S.B. 1119), Sec. 5, eff. September 1, 2007.

#### **CHAPTER 784. CRITICAL INCIDENT STRESS MANAGEMENT AND CRISIS RESPONSE SERVICES**

Sec. 784.001. DEFINITIONS. In this chapter:

(1) "Crisis response service" means consultation, risk assessment, referral, and on-site crisis intervention services provided by an emergency response team member to an emergency service provider affected by a crisis or disaster.

(2) "Critical incident stress" means the acute or cumulative psychological stress or trauma that an emergency service provider may experience in providing emergency services in response to a critical incident, including a crisis, disaster, or emergency. The stress or trauma is an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning, including:

- (A) physical and emotional illness;
- (B) failure of usual coping mechanisms;
- (C) loss of interest in the job;
- (D) personality changes; and
- (E) loss of ability to function.

(3) "Critical incident stress management service" means a service providing a process of crisis intervention designed to assist an emergency service provider in coping with critical incident stress. The term includes consultation, counseling, debriefing, defusing, intervention services, case management services, prevention, and referral.

(4) "Emergency response team member" means an individual providing critical incident stress management services or crisis response services, or both, who is designated by an appropriate state or local governmental unit to provide those services as a member of an organized team or in association with the governmental unit.

(5) "Emergency service provider" means an individual who provides emergency response services, including a law enforcement officer, firefighter, emergency medical services provider, dispatcher, or rescue service provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.002. CLOSED MEETINGS. (a) Except as provided by Subsection (b) and notwithstanding Chapter 551, Government Code, or any other law, a meeting in which critical incident stress management services or crisis response services are provided to an emergency service provider:

(1) is closed to the general public; and

(2) may be closed to any individual who was not directly involved in the critical incident or crisis.

(b) Subsection (a) does not apply if:

(1) the emergency service provider or the legal representative of the provider expressly agrees that the meeting may be open to the general public or to certain individuals; or

(2) the emergency service provider is deceased.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.003. CONFIDENTIALITY. (a) Except as otherwise provided by this section:

(1) a communication made by an emergency service provider



to an emergency response team member while the provider receives critical incident stress management services or crisis response services is confidential and may not be disclosed in a civil, criminal, or administrative proceeding; and

(2) a record kept by an emergency response team member relating to the provision of critical incident stress management services or crisis response services to an emergency service provider by the team is confidential and is not subject to subpoena, discovery, or introduction into evidence in a civil, criminal, or administrative proceeding.

(b) A court in a civil or criminal case or the decision-making entity in an administrative proceeding may allow disclosure of a communication or record described by Subsection (a) if the court or entity finds that the benefit of allowing disclosure of the communication or record is more important than protecting the privacy of the individual.

(c) A communication or record described by Subsection (a) is not confidential if:

(1) the emergency response team member reasonably needs to make an appropriate referral of the emergency service provider to or consult about the provider with another member of the team or an appropriate professional associated with the team;

(2) the communication conveys information that the emergency service provider is or appears to be an imminent threat to the provider or anyone else;

(3) the communication conveys information relating to a past, present, or future criminal act that does not directly relate to the critical incident or crisis;

(4) the emergency service provider or the legal representative of the provider expressly agrees that the communication or record is not confidential; or

(5) the emergency service provider is deceased.

(d) A communication or record described by Subsection (a) is not confidential to the extent that it conveys information concerning the services and care provided to or withheld by the emergency service provider to an individual injured in the critical incident or during the crisis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.004. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b), an emergency response team or an emergency response team member providing critical incident stress management services or crisis response services is not liable for damages, including personal injury, wrongful death, property damage, or other loss related to the team's or member's act, error, or omission in the performance of the services, unless the act, error, or omission constitutes wanton, wilful, or intentional misconduct.

(b) Subsection (a) limits liability for damages in any civil action, other than an action under Chapter 74, Civil Practice and Remedies Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

#### **CHAPTER 785. SEARCH AND RESCUE DOGS**

Sec. 785.001. DEFINITIONS. In this chapter:

(1) "Handler" means a person who handles a search and rescue dog and who is certified by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

(2) "Housing accommodations" has the meaning assigned by Section 121.002(3), Human Resources Code.

(3) "Public facility" means a facility described by Section 121.002(5), Human Resources Code.

(4) "Search and rescue dog" means a canine that is trained or being trained to assist a nationally recognized search and rescue agency in search and rescue activities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.002. DISCRIMINATION PROHIBITED. (a) The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog admittance to the facility.

(b) The owner, manager, or operator of a public facility, or an

employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog's handler admittance to the facility because of the presence of the handler's search and rescue dog.

(c) The owner, manager, or operator of a common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within this state, or an employee or other agent of the owner, manager, or operator, may not:

(1) refuse to accept as a passenger a search and rescue dog or the dog's handler; or

(2) require the dog's handler to pay an additional fare because of the search and rescue dog.

(d) The discrimination prohibited by this section includes:

(1) refusing to allow a search and rescue dog or the dog's handler to use or be admitted to a public facility;

(2) a ruse or subterfuge calculated to prevent or discourage a search and rescue dog or the dog's handler from using or being admitted to a public facility; and

(3) failing to make a reasonable accommodation in a policy, practice, or procedure to allow a search and rescue dog or the dog's handler to be admitted to a public facility.

(e) A policy relating to the use of a public facility by a designated class of persons from the general public may not prohibit the use of the particular public facility by a search and rescue dog or the dog's handler.

(f) A search and rescue dog's handler is entitled to full and equal access, in the same manner as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to any condition or limitation established by law that applies to all persons, except that the handler may not be required to pay an extra fee or charge or security deposit for the search and rescue dog.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. [1010](#)), Sec. 1, eff. September 1, 2013.

Sec. 785.003. PENALTY FOR DISCRIMINATION. (a) A person who violates Section 785.002 commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than

\$300 or more than \$1,000.

(b) It is a defense to prosecution under Subsection (a) that the actor requested the search and rescue dog handler's credentials under Section 785.005 and the handler failed to provide the actor with the credentials.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.004. RESPONSIBILITIES OF HANDLERS; CIVIL LIABILITY.

(a) A handler who accompanies a search and rescue dog shall keep the dog properly harnessed or leashed. A person may maintain a cause of action against a dog's handler for personal injury, property damage, or death resulting from the failure of the dog's handler to properly harness or leash the dog under the same law applicable to other causes brought for the redress of injuries caused by animals.

(b) The handler of a search and rescue dog is liable for any property damage caused by the search and rescue dog to a public facility or to housing accommodations.

(c) A governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 101, Civil Practice and Remedies Code. A public servant, as defined by Section 108.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 108, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.005. CANINE HANDLER CREDENTIALS. A person may ask a search and rescue dog handler to display proof that the handler is a person with a certification issued by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

**SUBTITLE C. FIRE**  
**CHAPTER 791. FIRE ESCAPES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 791.001. DEFINITIONS. In this chapter:

(1) "Owner" includes an individual, firm, association, or private corporation.

(2) "Story" has its usual architectural meaning and includes:

(A) a basement that extends five feet or more above the grade line on one or more sides of a building;

(B) a balcony or mezzanine floor of a building;

(C) a roof garden; or

(D) an attic used for any purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.002. FIRE ESCAPE REQUIRED. (a) The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Subchapters C and D if the building has at least:

(1) three stories and is used as a facility subject to Subchapter C; or

(2) two stories and is used as a school.

(b) A fire escape required by this chapter must meet the specifications provided by this chapter for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.003. COMPLIANCE. A building constructed after September 1, 1925, and subject to this chapter shall be equipped with fire escapes and must meet all other requirements of this chapter before the building is wholly or partially occupied or used.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.004. EXEMPTIONS. (a) This chapter does not apply to

the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under this chapter for a structure of three or more stories.

(b) This chapter does not apply to a grain elevator constructed of:

- (1) steel;
- (2) steel and concrete; or
- (3) wood if fewer than five persons are employed at the grain elevator.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.005. LOCATION OF FIRE ESCAPES. Consistent with accessibility, each fire escape subject to this chapter must be located as far as possible from stairways, elevator hatchways, and other openings in the floors of the building served by the fire escape. If possible, each fire escape must be located at the end of a hallway or unobstructed passageway and as far apart as is consistent with the construction and location of the building.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.006. INSPECTION; APPROVAL. (a) A fire escape subject to this chapter and each extension or addition to that fire escape shall be inspected before being approved for use.

(b) The inspection may be conducted by:

- (1) the state fire marshal;
- (2) an inspector of the State Board of Insurance;
- (3) the chief of a municipal fire department; or
- (4) a municipal fire marshal.

(c) A fire escape or an addition or extension to a fire escape may not be approved unless it meets the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.007. TESTS; AFFIDAVIT. (a) The person who erects a fire escape shall test the fire escape, on its completion and before final approval of the fire escape, by the application of a live load of 160 pounds per square foot of area of balcony floor and stair treads, or a dead load of 240 pounds per square foot of area of balcony floor and stair treads. The weight must be simultaneously imposed on each balcony and the stairways connecting the balconies that lead both up and down.

(b) Sand, gravel, concrete blocks, or any other suitable commodity may be used in performing the tests. The load must be accurately weighed and applied as specified in this section.

(c) A dead load must be placed in position in whole or in part by mechanical means without a person present on the fire escape when the test is made. A live load must be placed in position by mechanical means or by persons, and persons must be present on the fire escape as part of the load when the test is made.

(d) The person who erects the fire escape shall conduct the tests in the presence of:

- (1) the state fire marshal;
- (2) an appointed representative of the state fire marshal;
- (3) the chief of a fire department; or
- (4) a municipal fire marshal.

(e) If an official listed in Subsection (d) cannot be present to witness the test, any of the officials instead may accept an affidavit from the person who erects the fire escape that states that the minimum required test has been made and that the fire escape has passed the test.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. MINIMUM SPECIFICATIONS FOR FIRE ESCAPES**

Sec. 791.011. GENERAL REQUIREMENTS. (a) A fire escape shall be constructed and arranged in a manner that:

- (1) permits exit on the fire escape from each floor of the building above the first floor; and
- (2) provides an uninterrupted exit from the building to the grade.

(b) The materials, construction, erection, and test of a fire escape must comply with the minimum specifications established under

this subchapter for that type of fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.012. MINIMUM SPECIFICATIONS FOR EXTERIOR STAIRWAY FIRE ESCAPES. (a) An exterior stairway fire escape is a structure that:

- (1) is located on the exterior of a building;
- (2) is constructed of iron, steel, or reinforced concrete;

and

- (3) consists of balconies and stairways.

(b) An exterior stairway fire escape may be constructed in:

- (1) superimposed form;
- (2) straight run form;
- (3) superimposed form with intermediate balconies; or
- (4) a combination of those forms.

(c) The balconies for a superimposed form stairway fire escape attached to the building at two or more floors must equal in length the horizontal length of the stair runs plus an amount at each end equal to the width of the stairs. Each balcony must be as long as the width of the exit opening in the building wall and must be at least 50 inches wide inside the balcony railings.

(d) The balconies for a superimposed form stairway fire escape with intermediate balconies attached to the building at two or more floors must be at least equal in width to the combined width of the stairways connected by the balconies leading both up and down. The landings at the head and foot of the stairs must be as deep as the width of the stairs and as long as the width of the exit opening in the building wall.

(e) The balconies for a straight run form stairway fire escape must be at least equal in width to the width of the stairs and as long as the width of the exit opening in the building wall.

(f) The floor of an iron or steel balcony must be either solid or slatted. If solid, the floor must have a scored surface to prevent slipping and, to provide drainage, must be pitched at a slope of not less than one-half inch in 10 feet. If slatted, the slats may not be placed more than three-quarters inch apart and must be secured with rivets or bolts. Material used in the floor must be at least three-sixteenths inch thick.

(g) The railing enclosures of a balcony must be at least two



feet nine inches high. If of vertical and horizontal slat or grill construction, a space between slats or within the grill may not have a horizontal width of more than eight inches. If of truss construction, the span of a panel may not exceed three feet. An opening in the railing enclosures on any type of construction may not exceed two square feet. A railing enclosure must be free throughout its length from obstructions that tend to break handholds, and the passage space must be smooth and free from obstructions or projections. A railing enclosure must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(h) A balcony must be anchored to the building with bolts at least one inch in diameter, extending through the wall of the building and provided with a wall bearing plate on the interior that is at least five inches square and three-eighths inch thick, or must be anchored by such bolts set in concrete or masonry or made integral in new buildings. A balcony may not be placed above or more than one foot below the top of the sill of the exit opening in the building wall and preferably should be level with the sill.

(i) A concrete balcony must meet the requirements of this section and must be made of reinforced concrete composed of one part cement, two parts sand, and four parts stone or gravel. The railing enclosure of a concrete balcony must meet the specifications of this section or be made of reinforced concrete, with balusters spaced not more than one foot apart.

(j) The pitch of a fire escape stairway may not exceed 45 degrees.

(k) The stairway treads must be at least eight inches wide, excluding nosings, and at least 24 inches long. Treads must be placed so that the rise, either open or closed, does not exceed eight inches. If solid, treads must have a scored surface. If slatted, the slats must be placed not more than three-quarters inch apart and be well secured by bolts or rivets. Material used in the treads must be at least three-sixteenths inch thick.

(l) Railings must be provided on both sides of stairs. The railings must be at least two feet nine inches high, measured vertically from the center of the stair treads, and must be supported by balusters spaced not more than one foot apart. If an intermediate rail is provided, it shall be provided halfway between the top rail and the stair stringers and the balusters must be placed not more

than five feet apart. Stair railings must permit at least 24 inches of unobstructed passageway and must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(m) Concrete stairs must comply with the requirements of this section and must be made of reinforced concrete composed in the same mix as provided by Subsection (i). Railing enclosures for concrete stairs must be either as provided by Subsection (g) or of reinforced concrete balustrade with balusters spaced not more than one foot apart.

(n) Stairways must be built stationary to grade where possible and must be built stationary to grade for buildings such as schools or hospitals.

(o) If a fire escape terminates over a street, alley, private driveway, or other similar situation and terminates in a hinged and counterbalanced section of stairway, the construction of that section of stairs must conform to the stationary parts of the stairway and must be balanced so that the weight of one person on the third or fourth tread will lower the stairway to the landing. Bearings for counterbalanced stairs must be either bronze bushings or have sufficient clearance to prevent sticking caused by corrosion. A latch or lock may not be attached to the counterbalanced stairs in the up position, but a latch must be provided to hold the stairs in the down position when they have been swung to the ground. The connection between stair railings on the stationary part of the stairway and the counterbalanced part of the stairway must be designed to prevent the probability of injury to persons who use the fire escape. If necessary, a suitable opening must be provided in any awning, roof, or other intervening obstruction to admit the counterbalanced stairs and permit the passage of persons on the stairs.

(p) The fire escape must be connected to the roof of the building to which it is attached. If the roof of the building is designed in such a way that escape by way of the roof may be necessary, the fire escape must extend to the roof. If the connection is only for use by the fire department, it must be made with a gooseneck-type ladder with stringers made of material at least three-eighths inch thick, and rungs at least three-quarters inch in diameter, 16 inches long, and not more than 14 inches apart. The ladder must be anchored to the wall.

(q) The minimum unobstructed width of an exterior passageway in the fire escape, whether parallel to the building or at right angles to it, is 24 inches.

(r) The clearance at all points on balconies and stairs, as measured vertically, must be at least six feet six inches.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.013. MINIMUM SPECIFICATIONS FOR EXTERIOR CHUTE FIRE ESCAPES. (a) An exterior chute fire escape is a structure that is located on the exterior of a building and constructed of iron or steel and that consists of balconies and a straight or spiral gravity chute.

(b) An exterior straight chute fire escape may be in:

(1) superimposed form parallel to or at right angles to the building;

(2) straight run form parallel to or at right angles to the building; or

(3) a combination of those two forms.

(c) An exterior spiral chute fire escape must be constructed in a spiral form around a central column and must rest on and be anchored to a concrete base at least 18 inches thick.

(d) The chute and any intervening balconies must be constructed in a manner that provides a continuous gravity slide from the top floor to the grade and must be accessible from all floors of the building. An exterior straight chute must be placed at an angle that does not exceed 45 degrees.

(e) The balconies must meet the specifications imposed under Section 791.012 for the balconies of exterior stairway fire escapes.

(f) A straight chute must be composed of material equal to at least 14-gauge iron or steel. A spiral chute must be composed of material equal to at least 16-gauge iron or steel. The material used must be blue annealed or of equal type and must be capable of taking a smooth or polished surface.

(g) The interior of a straight chute must be 20 inches wide and 18 inches deep, and in cross section must have a concave bottom and straight sides. The interior of a spiral chute must be at least 30 inches wide. The interior of either form of chute must be free from obstructions or sharp edges.

(h) The top edges of a straight chute must be stiffened and protected throughout the length of the chute with iron or steel angles free from sharp edges. The angles must be of the size necessary to carry the maximum possible load. The chute must be reinforced crosswise underneath with iron or steel angles.

(i) The slideway of a spiral chute must be banked at the outer edge to prevent a passenger from being thrown against a guardrail or enclosure and must be enclosed by either a continuous wall or guardrail at least 30 inches high constructed of at least 18-gauge iron or steel. A spiral chute may not terminate more than two feet above the grade and must be constructed and arranged so that a normal landing is in a standing position.

(j) A landing composed of the same material as the chute must be provided at the lower end of a straight chute and must be of sufficient length in proportion to the length of the chute and the concavity of its surface to check the momentum attained through gravity and to provide a safe stop. The landing must be six inches wider than the chute on each side if wall construction does not interfere and must be without sharp edges or ragged projections. The landing must rest on and be anchored to a concrete base at least six inches thick.

(k) All rivets exposed inside a chute and on the top side of a landing of a straight chute must be countersunk and ground smooth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.014. MINIMUM SPECIFICATIONS FOR INTERIOR FIRE ESCAPES.

(a) An interior fire escape may be:

- (1) a stairway composed of iron, steel, or concrete; or
- (2) a straight or spiral chute composed of iron or steel.

(b) The fire escape must be enclosed with a noncombustible material. All door and window openings in the enclosure must be protected with self-closing fireproof shutters.

(c) Balconies or landings used with an interior fire escape must meet the construction requirements imposed under Section 791.012, except that a balcony used with an interior fire escape must permit at least 40 inches of unobstructed passageway, and the balconies or landings must be located on a level with the floors of the building.

(d) The stairs of an interior stairway fire escape must meet the requirements imposed under Section 791.012, except that the stairs must permit at least 40 inches of unobstructed passageway in all parts. An interior stairway fire escape may not use stairs of the types known as "spirals" or "winders".

(e) An interior stairway fire escape must be continuous, starting at the ground floor, and may not descend to any basement. It must extend through the roof of the building and must terminate in a penthouse constructed of noncombustible material equipped with a self-closing fire door as specified in this section.

(f) An interior chute fire escape must meet the requirements of Section 791.013.

(g) An interior fire escape must be accessible from all parts of the building it is designed to serve. Each lobby, hall, or passageway that leads to a fire escape and is used in connection with it must be at least 36 inches wide and at least six feet six inches high and must be level with the floor on which the fire escape opens and which it serves. The fire escape must be constructed at the lower end in a manner that permits direct exit to the outside of the building at the grade.

(h) The enclosing walls of an interior fire escape may be constructed of:

- (1) brick;
- (2) plain solid concrete;
- (3) reinforced stone or gravel concrete;
- (4) reinforced cinder concrete;
- (5) hollow terra-cotta blocks;
- (6) hollow concrete blocks composed of stone or cinder concrete mortar;
- (7) gypsum blocks; or
- (8) metal lath on steel studding.

(i) If the enclosing walls are of brick or plain solid concrete, they must be at least eight inches thick for the top 30 feet, increasing four inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least eight inches thick for the entire height if the walls are wholly supported at intervals not to exceed 30 feet. If the enclosing walls are of reinforced stone or gravel concrete, they must be at least five inches thick for the top 30 feet, increasing two inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least three inches thick for

the entire height if supported at vertical intervals not to exceed 20 feet and if braced as necessary with lateral supports or suitable steel uprights. If the enclosing walls are of reinforced cinder concrete, the concrete must be at least five inches thick for the entire height of the enclosing walls, and the walls must be supported at vertical intervals not to exceed 15 feet and must be braced as necessary with lateral supports or suitable steel uprights.

(j) If the enclosing walls are composed of hollow terra-cotta blocks, the blocks must be laid in cement mortar, and the walls must be at least five inches thick overall. If the enclosing walls are composed of hollow concrete blocks of either stone or cinder concrete mortar, the enclosing walls must be at least five inches thick overall. If the walls are constructed of gypsum blocks, the blocks may be either solid or hollow but must contain not more than 25 percent by weight of cinders, asbestos fiber, wood chips, or vegetable fiber. The gypsum blocks must be laid in gypsum plaster or cement mortar tempered with lime, and the enclosing walls must be at least five inches thick overall. If the walls are constructed of metal lath on steel studding, they must be covered with portland cement mortar or gypsum plaster of a finished thickness of at least two inches in the case of solid partitions or of at least three inches in the case of hollow partitions. Each opening in a wall or partition must have substantial steel framing, the vertical members of which must be securely attached to the floor construction above and below.

(k) Each door opening in an interior fire escape must be protected by the use of an automatic or self-closing fire door of standard manufacture, bearing the Underwriters Laboratory label. If an automatic fire door is used, it must be enclosed in a recessed partition. All doors must be arranged and equipped to remain in closed positions at all times and under all conditions except during actual use.

(l) Each window opening must be equipped with a metal sash bearing the Underwriters Laboratory label and with wire glass.

(m) Each interior fire escape must be provided at each landing with at least one light equal in power to a 10-watt electric globe. The lighting must be on a separate circuit from that of the rest of the building and must be designed to operate if the regular lighting system of the building is disabled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.015. EXIT LIGHTS; GUIDE SIGNS. (a) At least one red light must be installed and maintained in good condition at each exit to a fire escape in a building subject to Section 791.002. An exit light must be painted with the words "fire escape exit."

(b) One guide sign must be installed and maintained in good condition at each hallway intersection. An additional guide sign must be provided for every 25 lineal feet of hallway leading to a fire escape. A guide sign must be painted with the words "fire escape" and with an arrow or hand pointing to the nearest fire escape exit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.016. PAINTING AND MAINTENANCE REQUIREMENTS. (a) A fire escape constructed of iron or steel must be painted with at least two coats of good metallic paint when erected. The fire escape must be repainted at least every two years or more frequently if necessary to preserve the fire escape from rust or climatic influences.

(b) The slideway of a straight or spiral chute fire escape must be thoroughly cleaned and painted at least once each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN FACILITIES**

Sec. 791.021. ADDITIONAL FIRE ESCAPES FOR CERTAIN FACILITIES.

(a) This section applies to:

- (1) a hospital;
- (2) a seminary;
- (3) a college;
- (4) an academy;
- (5) a school;
- (6) a dormitory;
- (7) a hotel or other facility for the accommodation of

transient guests;

(8) a lodging house, apartment house, rooming house, or boardinghouse;

(9) a lodge hall;

(10) a theater or other public place of amusement; or

(11) any other facility used for public gatherings.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the facility's lot area if that excess is more than 2,000 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.022. ADDITIONAL FIRE ESCAPES FOR CERTAIN OFFICE BUILDINGS, STORES, OR INDUSTRIAL PLANTS. (a) This section applies to:

(1) an office building;

(2) a wholesale or retail mercantile establishment or store;

(3) a workshop or manufacturing establishment; or

(4) an industrial plant.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 6,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 6,000 square feet of area in excess of the initial 6,000 square feet; and

(2) the area in excess of the largest multiple of 6,000 square feet contained in the facility's lot area if that excess is more than 2,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.023. ADDITIONAL FIRE ESCAPES FOR CERTAIN WAREHOUSES AND MILLS. (a) This section applies to a warehouse, storehouse, or



mill building.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 8,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 8,000 square feet of area in excess of the initial 8,000 square feet; and

(2) the area in excess of the largest multiple of 8,000 square feet contained in the facility's lot area if that excess is more than 3,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.024. ADDITIONAL FIRE ESCAPES FOR NONSCHOOL PUBLIC BUILDINGS. (a) This section applies to a building, other than a school building, that is owned by this state or by a municipality or county of this state and in which public assemblies or sleeping apartments are permitted on any floor above the first floor.

(b) Each building subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the building's lot area if that excess is more than 2,000 square feet.

(c) Each person who has charge or supervision of a facility subject to this section, or who has charge or supervision of the letting of contracts for the construction of the facility, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN SCHOOL BUILDINGS**

Sec. 791.031. DEFINITIONS. (a) In this subchapter, "story" means the space between two successive floor levels of a building, and a basement is a story if the floor level immediately above the

basement is at least 10 feet above the grade line on at least one side of the building.

(b) In this subchapter, types of construction are classified as "fireproof," "semifireproof," or "ordinary," as those terms are defined in the most recent edition of the building code published by the successor organization to the National Board of Fire Underwriters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.032. APPLICATION. This subchapter applies to a building in which a school of any kind is conducted and that is:

- (1) at least two stories high; and
- (2) owned by a school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.033. COMPLIANCE REQUIREMENTS. Each person who has charge or supervision of a school building subject to this subchapter, or who has charge or supervision of the letting of contracts for the construction of the building, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.034. ADMINISTRATION; ENFORCEMENT. (a) The state fire marshal shall administer and supervise the enforcement of this subchapter and Section 791.024.

(b) The state fire marshal, an inspector of the State Board of Insurance, the chief of any fire department, and any municipal fire marshal shall enforce this subchapter and Section 791.024 by all lawful means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.035. FIRE ESCAPE REQUIREMENT. (a) A school building of at least three stories and of fireproof construction,

semifireproof construction, or ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(b) A school building of two stories and of ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(c) A school building of two stories that is of fireproof or semifireproof construction or that has stairways and hallways of that type of construction is not required to have a fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.036. REQUIRED TYPES OF FIRE ESCAPES; SPECIFICATIONS.

(a) A fire escape for a school building constructed before March 17, 1950, may be either an interior fire escape or an exterior fire escape.

(b) A school building constructed on or after March 17, 1950, that consists of at least three stories of fireproof construction or at least two stories of ordinary construction shall have interior fire escapes.

(c) An exterior fire escape for a school building constructed before March 17, 1950, may be:

- (1) an iron, steel, or concrete stairway;
- (2) an iron or steel straight chute;
- (3) an iron or steel spiral chute; or
- (4) a fire escape that is a combination of those types.

(d) Exterior fire escapes used in school buildings must meet the construction requirements of this section or similar construction requirements approved by the successor organization to the National Board of Fire Underwriters. Except as otherwise provided by this section, exterior fire escapes must be:

- (1) constructed throughout of noncombustible materials;
- (2) designed for a live load of 100 pounds per square foot;

and

- (3) supported by vertical steel columns.

(e) If it is impossible to use vertical steel columns in the construction of an exterior fire escape, the use of steel brackets

with bolts extending through the entire thickness of the wall may be approved.

(f) The landings and treads of exterior fire escapes must be of solid hatched steel plate or of steel gratings with interstices that do not exceed three-fourths inch and must be designed so that any accumulation of ice and snow is reduced to a minimum.

(g) The guardrails of exterior fire escapes must be at least three feet six inches high and must be substantially constructed. The guardrails must be faced either with heavy wire mesh or by steel balusters or rails not more than 9-1/2 inches o.c.

(h) The fire escape must have handrails on each side of the stairs that must be securely attached to the guardrails or to the building walls. Handrails must be two feet four inches to two feet six inches above the nosings.

(i) The calculated live load of an exterior fire escape must be clearly stated on the plans submitted for approval.

(j) Exterior fire escapes must be:

(1) free from obstruction;

(2) constructed in a manner that provides a safe exit for children;

(3) conveniently accessible from each floor above the first floor; and

(4) of sufficient width and strength so that each step and landing may accommodate two adults at the same time.

(k) If the Texas Education Agency approves that construction as providing a convenient and safe passage, doorways may be used as exits from each floor. The base of a doorway must be at the same level as the corresponding floor of the building and the landing of the fire escape to which the doorway leads. A doorway must be at least three feet wide and six feet six inches high and must be fitted with panic hardware approved by the successor organization to the National Board of Fire Underwriters. If there are two or more rooms or hallways adjacent and convenient to the landing of a fire escape, each room or hallway must have a doorway leading to that landing.

(l) The design of an interior fire escape used in a school building must meet the specifications required under Section 791.014, and must have:

(1) stairs and landings at least three feet six inches long and at least three feet wide;

(2) treads at least nine inches wide with a one inch

nosing; and

(3) risers of not more than 7-1/4 inches.

(m) A rise in a single run may not exceed nine feet six inches. A longer run must be interrupted by landings at least as deep as the width of the stairs.

(n) Stairs must extend continuously to the ground. Counterbalanced or swinging sections may not be approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.51, eff. Sept. 1, 1997.

Sec. 791.037. EXTERIOR FIRE ESCAPE EXITS. (a) An exit door leading to an exterior fire escape must open on a landing that is at least the width of the doors. The door must swing outward and be:

(1) at least three feet by six feet six inches;

(2) glazed with wire glass; and

(3) level at the bottom with the floors of the rooms or hallways and landings that it serves.

(b) An exit door may be secured only by panic hardware approved by the successor organization to the National Board of Fire Underwriters. Hooks, latches, bolts, locks, and similar devices are prohibited.

(c) A window may not be used as a means of access to an exterior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.038. WINDOWS. A window located beneath or within 10 feet of a fire escape must be glazed with wire glass.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. ENFORCEMENT AND PENALTY PROVISIONS**

Sec. 791.051. ENFORCEMENT. (a) The attorney general, the county attorney of a county in which a building is maintained in violation of this chapter, or the district attorney of a district in which such a building is located may bring an action in the name of the state for an injunction or other process to enforce this chapter

against the owner or person in charge of the building.

(b) The action shall be brought in the district court of the county in which the building is located.

(c) The action may be prosecuted by the attorney general, the county attorney, or the district attorney on that person's own motion, or on the relation of any individual, including the state fire marshal, an inspector of the State Board of Insurance, the chief of a municipal fire department, or a municipal fire marshal.

(d) A district judge may issue a mandatory injunction or other writ against a person to enforce this chapter. Disobedience of the injunction constitutes contempt of court and is punishable in the manner provided for contempt.

(e) The court may hear the case and may grant an injunction after the defendant has received 10 days' notice of the time and place set for the hearing on the injunction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.052. CRIMINAL PENALTY. (a) A person commits an offense if the person obstructs a fire escape or a hallway or entrance leading to a fire escape in a manner that prevents free access to or use of the fire escape. A door equipped with a lock requiring a key to operate is an obstruction.

(b) A person commits an offense if the person is the owner of a building required to be equipped with fire escapes and the person fails or refuses to comply with this chapter.

(c) A person commits an offense if the person serves as an agent in the care, management, supervision, control, or renting of a building for an owner who is not a resident of this state and the owner fails or refuses to comply with this chapter as it applies to that building.

(d) An offense under this section is punishable by a fine of not less than \$20 or more than \$50. If the defendant is a corporation, each officer or member of the board of directors of the corporation is subject to the fine.

(e) Each day's failure or refusal to comply constitutes a separate offense. Each day that an agent represents a nonresident owner who is not in compliance constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**CHAPTER 792. SMOKE DETECTORS IN HOTELS**

Sec. 792.001. DEFINITIONS. In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, or inn. The term does not include:

(A) a hospital, sanitarium, or nursing home; or

(B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

(2) "Person" has the meaning assigned by Section 1.07, Penal Code.

(3) "Smoke detector" means a device that is:

(A) designed to detect the presence of visible or invisible products of combustion in the air; and

(B) designed with an alarm audible throughout the room in which it is installed to alert the occupants of the room of the presence of visible or invisible products of combustion in the air of the room.

(4) "Smoke detector for hearing-impaired persons" means a smoke detector that, in addition to the sound alarm, uses a xenon design strobe light with a visible effective intensity of not less than 100 candela, as tested and labeled in accordance with ANSI/UL Standard 1638, and with a flash rate of not less than 60 nor more than 120 flashes per minute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.002. SMOKE DETECTORS IN HOTELS; CRIMINAL PENALTY.

(a) A person who operates a hotel commits an offense if the person:

(1) does not maintain a smoke detector in good working order in every room of the hotel that is regularly used for sleeping;

(2) does not maintain smoke detectors for hearing-impaired persons as prescribed by Subsection (b); or

(3) does not comply with the requirements of Subsection (c) if a hotel patron requests a room with a smoke detector for hearing-impaired persons.

(b) A person who operates a hotel shall maintain one smoke detector for hearing-impaired persons for each 60, or fraction of 60, rooms of the hotel that are regularly used for sleeping, except that the operator is not required to maintain more than five smoke detectors for hearing-impaired persons.

(c) If a hotel patron requests a room with a smoke detector for hearing-impaired persons, the operator of the hotel shall:

(1) assign the patron to a room in which a hard-wired smoke detector for hearing-impaired persons has been properly installed;  
or

(2) install in the patron's room a portable smoke detector for hearing-impaired persons using a receptacle that cannot be controlled by a wall switch.

(d) An offense under this section is a Class B misdemeanor.

(e) A person commits a separate offense under this section on each calendar day the person commits the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.003. SMOKE DETECTOR LIST. (a) To qualify for use under this chapter, a smoke detector must be listed by the state fire marshal after the device has been tested and shown to be effective by the state fire marshal or by a testing laboratory under conditions and procedures approved by the state fire marshal.

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted under Article 5.43-2, Insurance Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 9, eff. Sept. 1, 1991.

### **CHAPTER 793. DISABLING FIRE EXIT ALARMS**

Sec. 793.001. DEFINITIONS. In this chapter:

(1) "Fire exit" means a door, window, or other means of egress from a building that has been expressly designated as a fire escape or emergency exit by a sign, light, or other device located on or in the immediate vicinity of the fire escape or exit.

(2) "Fire exit alarm" means a device designed to sound an



alarm when a fire exit is opened or an attempt to open a fire exit is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 793.002. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person intentionally or knowingly causes a fire exit alarm to fail to sound an alarm; and

(2) the person is not authorized to do so by a person having lawful custody or control of the building or the part of the building in which the fire exit is located.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### CHAPTER 795. USE OF CERTAIN FIRE TRUCKS

Sec. 795.001. DEFINITION. In this chapter, "fire department" means:

(1) a volunteer fire department; or

(2) a department of a municipality, county, or special district or authority that provides fire-fighting services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.002. GOOD AND DEPENDABLE CONDITION REQUIRED. (a) This chapter applies only to a fire truck in a good and dependable operating condition. A fire truck is considered to be in a good and dependable operating condition if:

(1) the truck complies with the standards established by or under state law for the operating condition of a fire truck; and

(2) the fire department that uses the truck has secured certification by an underwriters laboratory that meets NATIONAL FIRE PROTECTION STANDARDS 1901.

(b) A fire truck may not be considered to be in a condition other than a good and dependable operating condition solely because the truck is 25 years old or older.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.003. CERTAIN RESTRICTIONS INVOLVING AGE OF FIRE TRUCK PROHIBITED. A contract, including any form of an insurance contract, or an order, ordinance, rule, or similar decree of a local government or state agency may not:

(1) restrict a fire department from using a fire truck that is 25 years old or older; or

(2) prevent any benefit from being claimed because the claim arises out of circumstances in which a fire truck that is 25 years old or older is used.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

#### **CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS**

Sec. 796.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person licensed by the comptroller to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means a roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; or

(B) that is wrapped in any substance containing tobacco that, because of the roll's appearance, the type of tobacco used in the filler, or the roll's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Manufacturer" means:

(A) a person that manufactures or otherwise produces cigarettes for sale in this state, including cigarettes intended to be sold through an importer; or

(B) the first purchaser that intends to resell in this state cigarettes manufactured anywhere that the original manufacturer does not intend to be sold in this state.

(4) "Retailer" means a person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products.

(5) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or

by any means or any agreement. The term includes, in addition to sales using cash or credit, the giving of a cigarette as a sample, prize, or gift and the exchange of a cigarette for any consideration other than money.

(6) "Sell" means to sell or to offer or agree to sell.

(7) "Wholesale dealer" means a person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, including a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in premises owned or occupied by another person.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A cigarette may not be sold or offered for sale in this state unless:

(1) the cigarette has been tested in accordance with Section 796.003;

(2) the cigarette meets the performance standard under Section 796.003;

(3) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 796.005; and

(4) the cigarette has been marked in accordance with Section 796.006.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.003. TESTING. (a) A manufacturer of cigarettes shall ensure that tests on cigarettes are conducted:

(1) in accordance with Standard Test Method for Measuring the Ignition Strength of Cigarettes, E2187-04, by the American Society of Testing and Materials, as that standard existed on January 1, 2007;

(2) on 10 layers of filter paper; and

(3) in a complete test trial of 40 replica tests.

(b) Not more than 25 percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns.

(c) The performance standard required by this section shall only be applied to a complete test trial.

(d) A written certification shall be based on testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization, or another comparable accreditation standard required by the state fire marshal.

(e) A laboratory testing in accordance with this section shall implement a quality control and quality assurance program to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program must include a procedure to determine the repeatability of the testing results. The repeatability value may not be greater than 0.19. For purposes of this subsection, "repeatability value" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(f) The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes on finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Subsection (b).

(g) A cigarette submitted for testing that uses lowered permeability bands in the cigarette paper to comply with the performance standard under this section must have at least two nominally identical bands on the paper surrounding the tobacco column and at least one complete band not less than 15 millimeters from the lighting end of the cigarette. A cigarette on which the bands are positioned by design must have at least two bands located not less than 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(h) This section does not require additional testing if a cigarette is tested in a manner that is consistent with this chapter for any other purpose.

(i) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required under this section shall be conducted in accordance with

this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with Section 796.003 shall propose a test method and performance standard for the cigarette to the state fire marshal. If the state fire marshal determines that the performance standard proposed by the manufacturer is equivalent to the performance standard under Section 796.003, the manufacturer may use the proposed test method.

(b) Unless the state fire marshal demonstrates a reasonable basis why an alternative test should not be accepted under this chapter, the state fire marshal shall authorize a manufacturer to employ the alternative test method and performance standard to certify a cigarette for sale in this state if the state fire marshal:

(1) determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter; and

(2) finds that the officials responsible for implementing those requirements have approved an alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be sold or offered for sale in this state, the cigarette's manufacturer must certify in writing to the state fire marshal that the cigarette has been tested in accordance with and meets the performance standard in Section 796.003 or 796.004.

(b) A certification filed under this section must include the following information:

(1) brand or trade name on the package;

- (2) style, such as light or ultra light;
- (3) length in millimeters;
- (4) circumference in millimeters;
- (5) flavor, such as menthol or chocolate, if applicable;
- (6) filter or nonfilter;
- (7) package description, such as soft pack or box;
- (8) marking approved in accordance with Section 796.006;
- (9) the name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and
- (10) the date that the testing occurred.

(c) The state fire marshal shall retain a copy of a certification and provide a copy to the comptroller to ensure compliance with this chapter.

(d) A cigarette certified under this section shall be recertified every three years.

(e) For each cigarette included in a certification, a manufacturer shall pay to the state fire marshal a fee in the amount of \$250, to be deposited only to the Texas Department of Insurance operating account in the general revenue fund.

(f) A cigarette certified under this section that is altered by the manufacturer in a way likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter may not be sold or offered for sale in this state unless the manufacturer retests the cigarette in accordance with Section 796.003 or 796.004 and maintains the records required by Section 796.007.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. [2935](#)), Sec. 1, eff. January 1, 2009.

Sec. 796.006. MARKING OF PACKAGE. (a) A manufacturer shall mark, in eight-point or larger type, cigarettes certified by the manufacturer in accordance with Section 796.005 to indicate compliance with the requirements of Section 796.003. The marking must consist of:

- (1) modification of the product Universal Product Code to include a visible mark printed at or around the area of the Universal Product Code and permanently stamped, engraved, embossed, or printed in conjunction with the Universal Product Code;

(2) a visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) other printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

(b) A manufacturer shall present its proposed marking to the state fire marshal for approval. Proposed markings are considered approved if the state fire marshal fails to disapprove the proposed markings on or before the 10th business day after the date the proposed markings are received. The state fire marshal must approve a marking:

(1) in use and approved for sale in another state; or

(2) with the letters "FSC" for Fire Standards Compliant appearing in eight-point or larger type and permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(c) A manufacturer shall use only one type of marking and shall apply the marking uniformly to all packages, including packs, cartons, and cases, and brands marketed by the manufacturer in this state.

(d) A manufacturer may not modify its approved marking unless the state fire marshal has approved the modification.

(e) A manufacturer shall provide sufficient copies of an illustration of the package marking to a wholesale dealer and agent to which the manufacturer sells cigarettes and provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retailer to which the wholesale dealers or agents will sell cigarettes. A wholesale dealer and an agent shall provide a copy of package markings received from a manufacturer to a retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer, agent, and retail dealer shall permit the state fire marshal, the comptroller, and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) A

manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for the previous three years and shall make copies of the reports available to the state fire marshal on the state fire marshal's written request.

(b) A manufacturer that fails to make copies of the reports available not later than 60 days after the date the manufacturer receives a written request shall be subject to a civil penalty, imposed as provided by Section 796.010, in an amount not to exceed \$10,000 per violation. Each day that the manufacturer does not make the copies available is a separate violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.008. RULES. The state fire marshal may adopt rules to administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.009. INSPECTION. (a) The state fire marshal may inspect the records and the stock of cigarettes of a person who manufactures, stores, or sells cigarettes to establish whether the person is complying with this chapter.

(b) The comptroller may, in the course of an inspection under Chapter 154, Tax Code, inspect cigarettes for a marking required under Section 796.006 and report the comptroller's findings to the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) A person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in the following amounts:

(1) if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of



cigarettes sold or offered for sale, but not more than \$100,000 for all violations occurring within a 30-day period;

(2) if the person is a retailer knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale, but not more than \$25,000 for all violations occurring within a 30-day period;

(3) if the person knowingly makes a false certification under Section 796.005, a civil penalty not to exceed \$75,000 for a first violation or \$250,000 for a second or subsequent violation; and

(4) if the person violates another provision of this chapter, other than Section 796.007(b), or another rule adopted under this chapter, a civil penalty not to exceed \$1,000 for a first violation or \$5,000 for a second or subsequent violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the attorney general, as determined by the attorney general or on request of the state fire marshal, may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) A cigarette sold or offered for sale in violation of this chapter is subject to forfeiture under Chapter 154, Tax Code, except that before a forfeited cigarette may be destroyed, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(d) A civil penalty collected under this section shall be deposited to the credit of the fire prevention and public safety account.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.011. FIRE PREVENTION AND PUBLIC SAFETY ACCOUNT. (a) The fire prevention and public safety account is a separate account in the general revenue fund.

(b) The account consists of civil penalties collected under

Section 796.010.

(c) Money in the account may be appropriated only to the state fire marshal to support fire safety and prevention programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not prohibit a person from manufacturing or selling cigarettes that do not meet the requirements of this chapter if:

(1) the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and

(2) the person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.013. INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.014. CONSUMER TESTING. This chapter does not prohibit the sale of a cigarette solely for the purpose of the cigarette's assessment conducted by a manufacturer, or under the control and direction of a manufacturer, to evaluate consumer acceptance of the cigarette by using only the quantity of cigarettes that is reasonably necessary for the assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.015. LOCAL REGULATION. A political subdivision of

this state may not adopt or enforce any ordinance or other regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in the chapter or by exclusion of that subject from the chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.016. FEDERAL REGULATION. On and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective, this chapter has no effect.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.017. REPORTS. Not later than January 1 of each odd-numbered year, the state fire marshal shall:

- (1) review the effectiveness of this chapter;
- (2) submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate committees of the legislature on the state fire marshal's administration of this chapter; and
- (3) make recommendations to improve the effectiveness of this chapter, if appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

#### **CHAPTER 797. PORTABLE FIRE EXTINGUISHERS**

Sec. 797.001. DEFINITIONS. In this chapter:

- (1) "NFPA" means the National Fire Protection Association.
- (2) "Portable fire extinguisher" means a device that contains liquid, powder, or gases for suppressing or extinguishing fires.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1,

eff. September 1, 2013.

Sec. 797.002. PORTABLE FIRE EXTINGUISHERS. A person may not use the term "portable fire extinguisher" or "fire extinguisher" in the sale or advertisement of an aerosol fire suppression device or similar fire suppression device unless the device conforms to NFPA Standard 10 (2010), "Standard for Portable Fire Extinguishers," or a successor standard adopted by the commissioner of insurance that is at least as stringent as the NFPA Standard 10, and is specifically listed for that use by a testing laboratory approved by the Texas Department of Insurance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1, eff. September 1, 2013.

**TITLE 10. HEALTH AND SAFETY OF ANIMALS**  
**CHAPTER 821. TREATMENT AND DISPOSITION OF ANIMALS**  
**SUBCHAPTER A. TREATMENT OF ANIMALS**

Sec. 821.001. DEFINITION. In this subchapter, "animal" includes every living dumb creature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.002. TREATMENT OF IMPOUNDED ANIMALS. (a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

(b) If an animal impounded under Subsection (a) continues to be without necessary food and water for more than 12 successive hours, any person may enter the pound or corral as often as necessary to supply the animal with necessary food and water. That person may recover the reasonable cost of the food and water from the owner of the animal. The animal is not exempt from levy and sale on execution of a judgment issued to recover those costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.003. TREATMENT OF LIVE BIRDS. (a) This section applies to a person who receives live birds for transportation or for confinement:

- (1) on wagons or stands;
- (2) by a person who owns a grocery store, commission house, or other market house; or
- (3) by any other person if the birds are to be closely confined.

(b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.

(c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.

(d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.

(e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.004. KNOWLEDGE OR ACTS OF CORPORATE AGENT OR EMPLOYEE. The knowledge and acts of an agent or employee of a corporation in regard to an animal transported, owned, or used by or in the custody of the corporation are the knowledge and acts of the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. DISPOSITION OF CRUELLY TREATED ANIMALS**

Sec. 821.021. DEFINITIONS. In this subchapter:

- (1) "Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to

fight with another animal.

(2) "Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose:

(A) the prevention of cruelty to animals; or

(B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

(3) "Owner" includes a person who owns or has custody or control of an animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 1, eff. September 1, 2011.

Sec. 821.0211. ADDITIONAL DEFINITION. In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

Acts 2003, 78th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 10, eff. September 1, 2009.

Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL. (a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or

municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 1, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Sec. 821.023. HEARING; ORDER OF DISPOSITION OR RETURN OF ANIMAL. (a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 or 42.092, Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

- (1) order a public sale of the animal by auction;
- (2) order the animal given to a municipal or county animal shelter or a nonprofit animal welfare organization; or
- (3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) After a court finds that an animal's owner has cruelly treated the animal, the court shall order the owner to pay all court costs, including:

- (1) the administrative costs of:
  - (A) investigation;
  - (B) expert witnesses; and
  - (C) conducting any public sale ordered by the court;

and

- (2) the costs incurred by a municipal or county animal

shelter or a nonprofit animal welfare organization in:

(A) housing and caring for the animal during its impoundment; and

(B) humanely destroying the animal if destruction is ordered by the court.

(e-1) After a court finds that an animal's owner has cruelly treated the animal, the court shall determine the estimated costs likely to be incurred by a municipal or county animal shelter or a nonprofit animal welfare organization to house and care for the impounded animal during the appeal process.

(e-2) After making the determination under Subsection (e-1), the court at the time of entering the judgment shall set the amount of bond for an appeal equal to the sum of:

(1) the amount of the court costs ordered under Subsection (e); and

(2) the amount of the estimated costs determined under Subsection (e-1).

(e-3) A court may not require a person to provide a bond in an amount greater than or in addition to the amount determined by the court under Subsection (e-2) to perfect an appeal under Section 821.025.

(e-4) Notwithstanding any other law, the amount of court costs that a court may order under Subsection (e) and the amount of bond that a court determines under Subsection (e-2) are excluded in determining the court's jurisdiction under Subtitle A, Title 2, Government Code.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 157, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 14.43, 14.44, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. [2328](#)), Sec. 4, eff. September 1, 2007.



Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 2, eff. September 1, 2011.

Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL.

(a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a municipal or county animal shelter or a nonprofit animal welfare organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 2, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 3, eff. September 1, 2011.

Sec. 821.025. APPEAL. (a) An owner divested of ownership of an animal under Section 821.023 may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and a cash bond or surety bond in an amount set by the court under Section 821.023(e-2).

(c) Not later than the fifth calendar day after the date the notice of appeal and bond is filed, the court from which the appeal is taken shall deliver a copy of the clerk's record to the clerk of the county court or county court at law to which the appeal is made.

(d) Not later than the 10th calendar day after the date the county court or county court at law, as appropriate, receives a copy of the clerk's record, the court shall consider the matter de novo and dispose of the appeal. A party to the appeal is entitled to a jury trial on request.

(e) The decision of the county court or county court at law under this section is final and may not be further appealed.

(f) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

(g) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

(h) While an appeal under this section is pending, the animal may not be:

(1) sold or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 11(a), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 4, eff. September 1, 2011.

Sec. 821.026. CONFLICT OF LAWS. In the event of a conflict between this subchapter and another provision of any other law relating to an appeal of a disposition regarding a cruelly treated animal, including the bond required for that appeal, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 5, eff. September 1, 2011.

**SUBCHAPTER C. EUTHANASIA OF ANIMALS**

Sec. 821.051. DEFINITIONS. In this subchapter:

- (1) "Animal" has the meaning assigned by Section 821.001.
- (2) "Animal shelter" means a facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.
- (3) "Board" means the executive commissioner.
- (4) "Department" means the Department of State Health Services.
- (5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 1, eff. May 10, 2013.

Sec. 821.052. METHODS OF EUTHANASIA. (a) A person may euthanize a dog or cat in the custody of an animal shelter only by administering sodium pentobarbital.

(b) A person may euthanize all other animals in the custody of an animal shelter, including birds and reptiles, only in accordance with the applicable methods, recommendations, and procedures set forth in the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia as modified or superseded by a subsequent report of the American Veterinary Medical Association Panel on Euthanasia that is approved by the board.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 2, eff. May 10, 2013.

Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL.

(a) The board by rule shall establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter.

(b) A person may administer sodium pentobarbital to euthanize an animal in the custody of an animal shelter only in accordance with the requirements and procedures established by board rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Sec. 821.054. REQUIREMENTS FOR USE OF COMMERCIALY COMPRESSED CARBON MONOXIDE. (a) The executive commissioner by rule shall establish:

- (1) standards for a carbon monoxide chamber used to euthanize an animal to which Section 821.052(b) applies; and
- (2) requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies.

(b) A person administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies:

- (1) may use only a carbon monoxide chamber that meets the standards established by department rule; and
- (2) may administer the commercially compressed carbon monoxide only in accordance with the requirements and procedures established by department rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 3, eff. May 10, 2013.

Sec. 821.055. TRAINING FOR EUTHANASIA TECHNICIANS. (a) A person may not euthanize an animal in the custody of an animal shelter unless the person has successfully completed, not more than three years before the date the person euthanizes the animal, a training course in the proper methods and techniques for euthanizing animals. The training course curriculum must include:

- (1) the pharmacology, proper administration, and storage of euthanasia solutions;
- (2) federal and state law regulating the storage and accountability of euthanasia solutions;
- (3) euthanasia technician stress management;
- (4) proper restraint and handling of an animal during euthanasia;
- (5) the procedures for administering commercially compressed carbon monoxide to an animal;

- (6) techniques for verifying an animal's death; and
- (7) the proper disposal of a euthanized animal.

(b) The department must approve the sponsors and curriculum of the training course required by this section.

(c) This section does not apply to a person licensed to practice veterinary medicine in this state.

(d) Notwithstanding Subsection (a), an employee of an animal shelter is not required to have successfully completed the training course before the 120th day following the date of initial employment.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Sec. 821.056. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates this subchapter or a board rule adopted under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.

Sec. 821.057. INJUNCTION. A court of competent jurisdiction, on the petition of any person, may prohibit by injunction the substantial violation of this subchapter or a board rule adopted under this subchapter.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. UNLAWFUL RESTRAINT OF DOG**

Sec. 821.076. DEFINITIONS. In this subchapter:

(1) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(2) "Owner" means a person who owns or has custody or control of a dog.

(3) "Properly fitted" means, with respect to a collar, a collar that measures the circumference of a dog's neck plus at least one inch.

(4) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or

trolley system.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. 1411), Sec. 1, eff. September 1, 2007.

Sec. 821.077. UNLAWFUL RESTRAINT OF DOG. (a) An owner may not leave a dog outside and unattended by use of a restraint that unreasonably limits the dog's movement:

- (1) between the hours of 10 p.m. and 6 a.m.;
- (2) within 500 feet of the premises of a school; or
- (3) in the case of extreme weather conditions, including

conditions in which:

(A) the actual or effective outdoor temperature is below 32 degrees Fahrenheit;

(B) a heat advisory has been issued by a local or state authority or jurisdiction; or

(C) a hurricane, tropical storm, or tornado warning has been issued for the jurisdiction by the National Weather Service.

(b) In this section, a restraint unreasonably limits a dog's movement if the restraint:

(1) uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;

(2) is a length shorter than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet;

(3) is in an unsafe condition; or

(4) causes injury to the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. 1411), Sec. 1, eff. September 1, 2007.

Sec. 821.078. EXCEPTIONS. Section 821.077 does not apply to:

(1) a dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;

(2) a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or

local authority or jurisdiction;

(3) a dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;

(4) a dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

(5) a dog restrained while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or

(6) a dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. [1411](#)), Sec. 1, eff. September 1, 2007.

Sec. 821.079. PENALTY. (a) A person commits an offense if the person knowingly violates this subchapter.

(b) A peace officer or animal control officer who has probable cause to believe that an owner is violating this subchapter shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.

(c) A person commits an offense if the person is provided a statement described by Subsection (b) and fails to comply with this subchapter within 24 hours of the time the owner is provided the statement. An offense under this subsection is a Class C misdemeanor.

(d) A person commits an offense if the person violates this subchapter and previously has been convicted of an offense under this subchapter. An offense under this subsection is a Class B misdemeanor.

(e) If a person fails to comply with this subchapter with respect to more than one dog, the person's conduct with respect to each dog constitutes a separate offense.

(f) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. 1411), Sec. 1, eff. September 1, 2007.

Sec. 821.080. DISPOSITION OF PENALTY. Notwithstanding any other law, the clerk of a court that collects a penalty under this subchapter shall remit the penalty collected for deposit in the general fund of the county.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. 1411), Sec. 1, eff. September 1, 2007.

Sec. 821.081. HAND-HELD LEASHES. This subchapter does not prohibit a person from walking a dog with a hand-held leash.

Added by Acts 2007, 80th Leg., R.S., Ch. 674 (H.B. 1411), Sec. 1, eff. September 1, 2007.

**CHAPTER 822. REGULATION OF ANIMALS**  
**SUBCHAPTER A. GENERAL PROVISIONS; DOGS THAT ATTACK PERSONS OR**

**ARE A DANGER TO PERSONS**

Sec. 822.001. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

(2) "Serious bodily injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

(3) "Dangerous dog," "dog," "owner," and "secure enclosure" have the meanings assigned by Section 822.041.

(4) "Secure" means to take steps that a reasonable person



would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 3, eff. September 1, 2007.

Sec. 822.0011. APPLICATION TO CERTAIN PROPERTY. For purposes of this subchapter, a person's property includes property the person is entitled to possess or occupy under a lease or other agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 4, eff. September 1, 2007.

Sec. 822.002. SEIZURE OF A DOG CAUSING DEATH OF OR SERIOUS BODILY INJURY TO A PERSON. (a) A justice court, county court, or municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:

(1) on the sworn complaint of any person, including the county attorney, the city attorney, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

(2) on a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.

(b) The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.001 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.003. HEARING. (a) The court shall set a time for a hearing to determine whether the dog caused the death of or serious

bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county attorney or city attorney, is entitled to present evidence at the hearing.

(d) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog.

(e) The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog.

(f) The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person and:

(1) the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:

(A) the enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dog; and

(B) the injured person was at least eight years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(2) the dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in

an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(3) the attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;

(4) the dog was defending a person from an assault or person's property from damage or theft by the injured person; or

(5) the injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.002 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.004. DESTRUCTION OF DOG. The destruction of a dog under this subchapter must be performed by:

(1) a licensed veterinarian;

(2) personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or

(3) personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.003 by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.005. ATTACK BY DOG. (a) A person commits an offense if the person is the owner of a dog and the person:

(1) with criminal negligence, as defined by Section 6.03, Penal Code, fails to secure the dog and the dog makes an unprovoked attack on another person that occurs at a location other than the owner's real property or in or on the owner's motor vehicle or boat and that causes serious bodily injury, as defined by Section 1.07, Penal Code, or death to the other person; or

(2) knows the dog is a dangerous dog by learning in a manner described by Section 822.042(g) that the person is the owner

of a dangerous dog, and the dangerous dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained in accordance with Subchapter D and that causes serious bodily injury, as defined by Section 822.001, or death to the other person.

(b) An offense under this section is a felony of the third degree unless the attack causes death, in which event the offense is a felony of the second degree.

(c) If a person is found guilty of an offense under this section, the court may order the dog destroyed by a person listed in Section 822.004.

(d) A person who is subject to prosecution under this section and under any other law may be prosecuted under this section, the other law, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.004 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. [1355](#)), Sec. 5, eff. September 1, 2007.

Sec. 822.006. DEFENSES. (a) It is a defense to prosecution under Section 822.005(a) that the person is a veterinarian, a veterinary clinic employee, a peace officer, a person employed by a recognized animal shelter, or a person employed by this state or a political subdivision of this state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.005(a) that the person is an employee of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes and is training or using the dog in connection with the person's official capacity.

(c) It is a defense to prosecution under Section 822.005(a) that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code, and has temporary ownership, custody, or control of the dog in connection with that position.

(d) It is a defense to prosecution under Section 822.005(a) that the person is disabled and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

(e) It is a defense to prosecution under Section 822.005(a) that the person attacked by the dog was at the time of the attack engaged in conduct prohibited by Chapters 19, 20, 21, 22, 28, 29, and 30, Penal Code.

(f) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized search and rescue effort at the request of law enforcement.

(g) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized dog show or event sponsored by a nationally recognized or state-recognized kennel club.

(h) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are engaged in:

- (1) a lawful hunting activity; or
- (2) a farming or ranching activity, including herding livestock, typically performed by a working dog on a farm or ranch.

(i) It is a defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person's dog was on a leash and the person:

- (1) was in immediate control of the dog; or
- (2) if the person was not in control of the dog, the person was making immediate and reasonable attempts to regain control of the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. [1355](#)), Sec. 6, eff. September 1, 2007.

Sec. 822.007. LOCAL REGULATION OF DOGS. This subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. [1355](#)), Sec. 6, eff. September 1, 2007.

**SUBCHAPTER B. DOGS AND COYOTES THAT ARE A DANGER TO ANIMALS**

Sec. 822.011. DEFINITIONS. In this subchapter:

(1) "Dog or coyote" includes a crossbreed between a dog and a coyote.

(2) "Livestock" includes exotic livestock as defined by Section 161.001, Agriculture Code.

Added by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.012. CERTAIN DOGS AND COYOTES PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY. (a) The owner, keeper, or person in control of a dog or coyote that the owner, keeper, or person knows is accustomed to run, worry, or kill livestock, domestic animals, or fowls may not permit the dog or coyote to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than \$100.

(c) Each time a dog or coyote runs at large in violation of this section constitutes a separate offense.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.011 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.013. DOGS OR COYOTES THAT ATTACK ANIMALS. (a) A dog or coyote that is attacking, is about to attack, or has recently attacked livestock, domestic animals, or fowls may be killed by:

(1) any person witnessing the attack; or

(2) the attacked animal's owner or a person acting on behalf of the owner if the owner or person has knowledge of the attack.

(b) A person who kills a dog or coyote as provided by this section is not liable for damages to the owner, keeper, or person in control of the dog or coyote.

(c) A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, domestic animals, or fowls may detain or impound the dog or coyote and return

it to its owner or deliver the dog or coyote to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote and all damage done by the dog or coyote.

(d) The owner, keeper, or person in control of a dog or coyote that is known to have attacked livestock, domestic animals, or fowls shall control the dog or coyote in a manner approved by the local animal control authority.

(e) A person is not required to acquire a hunting license under Section 42.002, Parks and Wildlife Code, to kill a dog or coyote under this section.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.033 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS**

##### **Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER.**

This subchapter applies only to a county that adopts this subchapter by a majority vote of the qualified voters of the county voting at an election held under this subchapter. This subchapter shall not apply to any county or municipality that enacts or has enacted registration or restraint laws pursuant to Chapter 826 (Rabies Control Act of 1981).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 489, Sec. 1, eff. Aug. 28, 1995.

Sec. 822.022. PETITION FOR ELECTION. (a) On receiving a petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less, the commissioners court of a county shall order an election to determine whether the registration of and registration fee for dogs will be required in the county.

(b) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.023. NOTICE. In addition to the notice required by Section 4.003, Election Code, notice of an election under this subchapter shall be published at least once in an English language newspaper of general circulation in the county. If there is no English language newspaper of general circulation in the county, the notice shall be posted at the courthouse door for at least one week before the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.024. BALLOT PROPOSITION. The ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "Registration of and registration fee for dogs."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.025. ELECTION RESULT. (a) If a majority of those voting at the election vote in favor of the measure, the requirement that dogs be registered takes effect in the county on the 10th day after the date on which the result of the election is declared.

(b) The county judge shall issue a proclamation declaring the result of the election if the vote is in favor of the measure. The proclamation shall be published at least once in an English language newspaper of general circulation in the county or, if there is no English language newspaper of general circulation in the county, the proclamation shall be posted at the courthouse door.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.026. INTERVAL BETWEEN ELECTIONS. (a) If the result of an election is against the registration of and registration fee for dogs, another election on that subject may not be held for six months after the date of the election.

(b) If the result of an election is for the registration of and registration fee for dogs, an election to repeal the registration and



fee may not be held for two years from the date of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE. (a) The commissioners court of a county shall furnish the county treasurer the necessary dog identification tags.

(b) The tags must be numbered consecutively and must be printed or impressed with the name of the county issuing the tags.

(c) The county treasurer shall assign a registration number to each dog registered with the county and shall give the owner or person having control of the dog the identification tag and a registration certificate.

(d) The county treasurer shall record the registration of a dog, including the age, breed, color, sex, and registration date of the dog. If the registration information is not recorded on microfilm, as may be permitted under other law, it shall be recorded in a book kept for that purpose.

(e) If the ownership of a dog is transferred, the dog's registration certificate shall be transferred to the new owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.028. REGISTRATION FEE. (a) An owner of a dog registered under this subchapter must pay a registration fee of \$1. However, the commissioners court of the county may set the fee in an amount of more than \$1 but not more than \$5, and if the court sets the amount of the fee the owner must pay that amount.

(b) Registration is valid for one year from the date of registration.

(c) If a dog is moved to another county, the owner may present the registration certificate to the county treasurer of the county to which the dog is moved and receive without additional cost a registration certificate. The new registration certificate is valid for one year from the date of registration in the county from which the dog was moved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 870, Sec. 1, eff. June 14, 2001.

Sec. 822.029. DISPOSITION OF FEE. (a) The fee collected for the registration of a dog shall be deposited to the credit of a special fund of the county and used only to:

(1) defray the cost of administering this subchapter in the county, including the costs of registration and the identification tags; and

(2) reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed in the county by a dog not owned by the person seeking reimbursement.

(b) Reimbursement under Subsection (a)(2) shall be made on the order of the commissioners court only on satisfactory proof of the killing.

(c) The commissioners court shall determine the amount and time of reimbursement. If there is insufficient money in the fund to reimburse all injured persons in full, reimbursement shall be made on a pro rata basis.

(d) The county treasurer shall keep an accurate record showing all amounts received into and paid from the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS. (a) The owner or person having control of a dog six months of age or older in a county that has adopted this subchapter must register the dog not later than the 30th day after the date on which the proclamation is published or adopted.

(b) A dog brought into a county for not more than 10 days for breeding purposes, trial, or show is not required to be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE. The owner or person having control of a dog at least six months of age in a county adopting this subchapter may not allow the dog to run at large unless the dog:

(1) is registered under this subchapter with the county in which the dog runs at large; and

(2) has fastened about its neck a dog identification tag issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.035. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) fails or refuses to register a dog required to be registered under this subchapter;

(2) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so; or

(3) violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 30 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER D. DANGEROUS DOGS**

Sec. 822.041. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area where the dog is kept or a county sheriff in an area with no animal control office.

(2) "Dangerous dog" means a dog that:

(A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(3) "Dog" means a domesticated animal that is a member of the canine family.

(4) "Secure enclosure" means a fenced area or structure that is:

(A) locked;

(B) capable of preventing the entry of the general

public, including children;

(C) capable of preventing the escape or release of a dog;

(D) clearly marked as containing a dangerous dog; and

(E) in conformance with the requirements for enclosures established by the local animal control authority.

(5) "Owner" means a person who owns or has custody or control of the dog.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.042. REQUIREMENTS FOR OWNER OF DANGEROUS DOG. (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

(1) register the dangerous dog with the animal control authority for the area in which the dog is kept;

(2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(3) obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept; and

(4) comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

(b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(c) If, on application of any person, a justice court, county court, or municipal court finds, after notice and hearing as provided by Section 822.0423, that the owner of a dangerous dog has failed to comply with Subsection (a) or (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions.

(d) The owner shall pay any cost or fee assessed by the

municipality or county related to the seizure, acceptance, impoundment, or destruction of the dog. The governing body of the municipality or county may prescribe the amount of the fees.

(e) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority. The court shall order the authority to return the dog to the owner if the owner complies with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority.

(f) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.

(g) For purposes of this section, a person learns that the person is the owner of a dangerous dog when:

(1) the owner knows of an attack described in Section 822.041(2)(A) or (B);

(2) the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog under Section 822.0423; or

(3) the owner is informed by the animal control authority that the dog is a dangerous dog under Section 822.0421.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997;  
Acts 1999, 76th Leg., ch. 96, Sec. 1, eff. May 17, 1999.

Sec. 822.0421. DETERMINATION THAT DOG IS DANGEROUS. (a) If a person reports an incident described by Section 822.041(2), the animal control authority may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control authority determines the dog is a dangerous dog, it shall notify the owner of that fact.

(b) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to a justice, county, or municipal court of competent jurisdiction. An owner may appeal the decision of the justice, county, or municipal court in the same manner as appeal for other cases from the justice,

county, or municipal court.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.0422. REPORTING OF INCIDENT IN CERTAIN COUNTIES AND MUNICIPALITIES. (a) This section applies only to a county with a population of more than 2,800,000, to a county in which the commissioners court has entered an order electing to be governed by this section, and to a municipality in which the governing body has adopted an ordinance electing to be governed by this section.

(b) A person may report an incident described by Section 822.041(2) to a municipal court, a justice court, or a county court. The owner of the dog shall deliver the dog to the animal control authority not later than the fifth day after the date on which the owner receives notice that the report has been filed. The authority may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) If the owner fails to deliver the dog as required by Subsection (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

(d) The court shall determine, after notice and hearing as provided in Section 822.0423, whether the dog is a dangerous dog.

(e) The court, after determining that the dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042 and the dog is returned to the owner or destroyed.

(f) The owner shall pay a cost or fee assessed under Section 822.042(d).

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 96, Sec. 2, eff. May 17, 1999.

Sec. 822.0423. HEARING. (a) The court, on receiving a report of an incident under Section 822.0422 or on application under Section

822.042(c), shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with Section 822.042. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

(d) An owner or person filing the action may appeal the decision of the municipal court, justice court, or county court in the manner provided for the appeal of cases from the municipal, justice, or county court.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.043. REGISTRATION. (a) An animal control authority for the area in which the dog is kept shall annually register a dangerous dog if the owner:

(1) presents proof of:

(A) liability insurance or financial responsibility, as required by Section 822.042;

(B) current rabies vaccination of the dangerous dog; and

(C) the secure enclosure in which the dangerous dog will be kept; and

(2) pays an annual registration fee of \$50.

(b) The animal control authority shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

(c) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee of \$25, the animal control authority shall issue a new registration tag to be placed on the

dangerous dog's collar.

(d) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.044. ATTACK BY DANGEROUS DOG. (a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.

(b) An offense under this section is a Class C misdemeanor.

(c) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in Section 822.004.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 8, eff. September 1, 2007.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 8, eff. September 1, 2007.

Sec. 822.045. VIOLATIONS. (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with Section 822.042 or Section 822.0422(b) or an applicable municipal or county regulation relating to dangerous dogs.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.



Sec. 822.046. DEFENSE. (a) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

(c) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.809, eff. Sept. 1, 2001.

Sec. 822.047. LOCAL REGULATION OF DANGEROUS DOGS. A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions:

- (1) are not specific to one breed or several breeds of dogs; and
- (2) are more stringent than restrictions provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

#### **SUBCHAPTER E. DANGEROUS WILD ANIMALS**

Sec. 822.101. DEFINITIONS. In this subchapter:

- (1) "Animal registration agency" means the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office.
- (2) "Board" means the Texas Board of Health.
- (3) "Commercial activity" means:
  - (A) an activity involving a dangerous wild animal

conducted for profit that is not inherent to the animal's nature;

(B) an activity for which a fee is charged and that is entertainment using or an exhibition of the animal; or

(C) the selling, trading, bartering, or auctioning of a dangerous wild animal or a dangerous wild animal's body parts.

(4) "Dangerous wild animal" means:

(A) a lion;

(B) a tiger;

(C) an ocelot;

(D) a cougar;

(E) a leopard;

(F) a cheetah;

(G) a jaguar;

(H) a bobcat;

(I) a lynx;

(J) a serval;

(K) a caracal;

(L) a hyena;

(M) a bear;

(N) a coyote;

(O) a jackal;

(P) a baboon;

(Q) a chimpanzee;

(R) an orangutan;

(S) a gorilla; or

(T) any hybrid of an animal listed in this subdivision.

(5) "Owner" means any person who owns, harbors, or has custody or control of a dangerous wild animal.

(6) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

(7) "Primary enclosure" means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the

secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

(b) This subchapter does not require a municipality that does not have an animal control office to create that office.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 31, eff. June 18, 2005.

Sec. 822.103. CERTIFICATE OF REGISTRATION; FEES. (a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency.

(b) A certificate of registration issued under this subchapter is not transferrable and is valid for one year after its date of issuance or renewal unless revoked.

(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed \$50 for each animal registered and may not exceed \$500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.104. CERTIFICATE OF REGISTRATION APPLICATION. (a) An applicant for an original or renewal certificate of registration for a dangerous wild animal must file an application with an animal registration agency on a form provided by the animal registration agency.

(b) The application must include:

- (1) the name, address, and telephone number of the applicant;
- (2) a complete identification of each animal, including species, sex, age, if known, and any distinguishing marks or coloration that would aid in the identification of the animal;
- (3) the exact location where each animal is to be kept;
- (4) a sworn statement that:
  - (A) all information in the application is complete and accurate; and
  - (B) the applicant has read this subchapter and that all facilities used by the applicant to confine or enclose the animal comply with the requirements of this subchapter; and
- (5) any other information the animal registration agency may require.

(c) An applicant shall include with each application:

- (1) the nonrefundable fee;
- (2) proof, in a form acceptable by the animal registration agency, that the applicant has liability insurance, as required by Section 822.107;
- (3) a color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;
- (4) a photograph and a statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises; and
- (5) if an applicant holds a Class "A" or Class "B" dealer's license or Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments, a clear and legible photocopy of the license.

(d) In addition to the items required under Subsection (c), an application for renewal must include a statement signed by a

veterinarian licensed to practice in this state stating that the veterinarian:

(1) inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and

(2) finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.105. DENIAL OR REVOCATION OF CERTIFICATE OF REGISTRATION; APPEAL. (a) If the animal registration agency finds that an application for an original or renewal certificate of registration under this subchapter does not meet the requirements of Section 822.104 or, after inspection, that an applicant has not complied with this subchapter, the animal registration agency shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the denial.

(b) If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.

(c) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located or the municipal court in the municipality in which the animal is located not later than the 15th day after the date the certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.

(d) The filing of an appeal of the denial or revocation of a certificate of registration under Subsection (c) stays the denial or revocation until the court rules on the appeal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.106. DISPLAY OF CERTIFICATE OF REGISTRATION. (a) A holder of a certificate of registration shall prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.

(b) Not later than the 10th day after the date a person receives a certificate of registration, the person shall file a clear and legible copy of the certificate of registration with the Texas Department of Health. The department shall establish a procedure for filing a certificate of registration and shall charge a reasonable fee in an amount sufficient to recover the cost associated with filing a certificate of registration under this subsection.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.107. LIABILITY INSURANCE. An owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than \$100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.108. INSPECTION. An owner of a dangerous wild animal, at all reasonable times, shall allow the animal registration agency, its staff, its agents, or a designated licensed veterinarian to enter the premises where the animal is kept and to inspect the animal, the primary enclosure for the animal, and the owner's records relating to the animal to ensure compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.109. RELOCATION OR DISPOSITION OF ANIMAL. (a) An owner of a dangerous wild animal may not permanently relocate the animal unless the owner first notifies the animal registration agency in writing of the exact location to which the animal will be

relocated and provides the animal registration agency, with respect to the new location, the information required by Section 822.104.

(b) Within 10 days after the death, sale, or other disposition of the animal, the owner of the animal shall notify the animal registration agency in writing of the death, sale, or other disposition.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.110. ATTACK BY ANIMAL; ESCAPE OF ANIMAL; LIABILITY.

(a) An owner of a dangerous wild animal shall notify the animal registration agency of any attack of a human by the animal within 48 hours of the attack.

(b) An owner of a dangerous wild animal shall immediately notify the animal registration agency and the local law enforcement agency of any escape of the animal.

(c) An owner of a dangerous wild animal that escapes is liable for all costs incurred in apprehending and confining the animal.

(d) An animal registration agency, a law enforcement agency, or an employee of an animal registration agency or law enforcement agency is not liable to an owner of a dangerous wild animal for damages arising in connection with the escape of a dangerous wild animal, including liability for damage, injury, or death caused by the animal during or after the animal's escape, or for injury to or death of the animal as a result of apprehension or confinement of the animal after escape.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.111. POWERS AND DUTIES OF BOARD; CAGING REQUIREMENTS AND STANDARDS. (a) The board by rule shall establish caging requirements and standards for the keeping and confinement of a dangerous wild animal to ensure that the animal is kept in a manner and confined in a primary enclosure that:

- (1) protects and enhances the public's health and safety;
- (2) prevents escape by the animal; and
- (3) provides a safe, healthy, and humane environment for the animal.

(b) An owner of a dangerous wild animal shall keep and confine



the animal in accordance with the caging requirements and standards established by the board.

(c) An animal registration agency may approve a deviation from the caging requirements and standards established by the board, only if:

- (1) the animal registration agency has good cause for the deviation; and
- (2) the deviation:
  - (A) does not compromise the public's health and safety;
  - (B) does not reduce the total area of the primary enclosure below that established by the board; and
  - (C) does not otherwise adversely affect the overall welfare of the animal involved.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.112. CARE, TREATMENT, AND TRANSPORTATION OF ANIMAL.

(a) For each dangerous wild animal, the owner shall comply with all applicable standards of the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act relating to:

- (1) facilities and operations;
- (2) animal health and husbandry; and
- (3) veterinary care.

(b) An owner of a dangerous wild animal shall maintain a separate written log for each dangerous wild animal documenting the animal's veterinary care and shall make the log available to the animal registration agency or its agent on request. The log must:

- (1) identify the animal treated;
- (2) provide the date of treatment;
- (3) describe the type or nature of treatment; and
- (4) provide the name of the attending veterinarian, if

applicable.

(c) When transporting a dangerous wild animal, the owner of the animal, or a designated carrier or intermediate handler of the animal, shall comply with all transportation standards that apply to that animal under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments or the regulations adopted under that Act.

(d) A person is exempt from the requirements of this section if the person is caring for, treating, or transporting an animal for which the person holds a Class "A" or Class "B" dealer's license or a Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.113. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates Section 822.103(a), Section 822.106, or Section 822.110(a) or (b). Each animal with respect to which there is a violation and each day that a violation continues is a separate offense.

(b) A person commits an offense if the person knowingly sells or otherwise transfers ownership of a dangerous wild animal to a person who does not have a certificate of registration for that animal as required by this subchapter.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.114. CIVIL PENALTY. (a) A person who violates Section 822.103(a) is liable for a civil penalty of not less than \$200 and not more than \$2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(b) The county or municipality in which the violation occurs may sue to collect a civil penalty. A civil penalty collected under this subsection may be retained by the county or municipality.

(c) The county or municipality in which the violation occurs may also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the animal registration agency in the civil action. Costs or fees recovered under this subsection shall be credited to the operating account from which payment for the animal registration agency's expenditures was made.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.115. INJUNCTION. Any person who is directly harmed or threatened with harm by a violation of this subchapter or a failure to enforce this subchapter may sue an owner of a dangerous wild animal to enjoin a violation of this subchapter or to enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.116. EFFECT OF SUBCHAPTER ON OTHER LAW. (a) This subchapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of this state or a political subdivision of this state.

(b) This subchapter does not prevent a municipality or county from prohibiting or regulating by ordinance or order the ownership, possession, confinement, or care of a dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

#### **CHAPTER 823. ANIMAL SHELTERS**

Sec. 823.001. DEFINITIONS. In this chapter:

- (1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.
- (2) "Board" means the Texas Board of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Department" means the Texas Department of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, CLINICS, AND FACILITIES. This chapter does not apply to:

- (1) a county having a population of less than 75,000;
- (2) a veterinary medicine clinic; or
- (3) a livestock commission facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 280, eff. Sept. 1, 1991.

## Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY.

(a) Each animal shelter operated in this state shall comply with the standards for:

(1) housing and sanitation existing on September 1, 1982, and adopted under Chapter 826; and

(2) animal control officer training adopted under Chapter 829.

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) An animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Each person who operates an animal shelter shall employ a veterinarian at least once a year to inspect the shelter to determine whether it complies with the requirements of this chapter and Chapter 829. The veterinarian shall file copies of the veterinarian's report with the person operating the shelter and with the department on forms prescribed by the department.

(e) The board may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A person commits an offense if the person substantially violates this section. An offense under this subsection is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. [1562](#)), Sec. 2, eff. September 1, 2007.

Sec. 823.005. ADVISORY COMMITTEE. (a) The governing body of a county or municipality in which an animal shelter is located shall appoint an advisory committee to assist in complying with the requirements of this chapter.

(b) The advisory committee must be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and

one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.007. INJUNCTION. A court of competent jurisdiction may, on the petition of any person, prohibit by injunction the substantial violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.008. ENFORCEMENT BY COUNTY. (a) A county may enforce this chapter.

(b) This section does not authorize a county to establish standards for operating an animal shelter.

(c) A county may not enforce this chapter at an animal shelter operated by a municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

Sec. 823.009. CIVIL PENALTY. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A civil penalty under this chapter may not be less than \$100 or more than \$500 for each violation and for each day of a continuing violation. This subsection does not apply at an animal shelter operated by a municipality.

(c) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the county or municipality in which the violation occurs may institute a civil suit in district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of the civil penalty; or

(3) both injunctive relief and the civil penalty.

(d) A bond is not required in an action brought under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

**CHAPTER 825. PREDATORY ANIMALS AND ANIMAL PESTS**  
**SUBCHAPTER A. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN**  
**CONTROLLING PREDATORY ANIMALS AND RODENTS**

Sec. 825.001. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS. The state shall cooperate through The Texas A&M University System with the appropriate federal officers and agencies in controlling coyotes, mountain lions, bobcats, Russian boars, and other predatory animals and in controlling prairie dogs, pocket gophers, jackrabbits, ground squirrels, rats, and other rodent pests to protect livestock, food and feed supplies, crops, and ranges.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.002. COOPERATIVE AGREEMENT. The director of the Texas Agricultural Extension Service shall execute a cooperative agreement with the appropriate federal officers or agencies to perform the cooperative work in predatory animal and rodent control in the manner and under the regulations stated in the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.003. EXPENDITURE OF APPROPRIATIONS. The state funds appropriated to administer this subchapter shall be spent in amounts as authorized by the Board of Regents of The Texas A&M University System and disbursed on vouchers or payrolls certified by the director of the extension service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.004. APPROPRIATIONS BY LOCAL GOVERNMENTS. The commissioners court of a county or the governing body of a municipality may appropriate funds to perform predatory animal and rodent control work described by this subchapter and, in cooperation with federal and state authorities, may employ labor and purchase and provide supplies required to effectively perform that work.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.005. SALE OF FURS, SKINS, AND SPECIMENS. (a) Except as provided by Subsection (b), all furs, skins, and specimens of value taken by hunters or trappers paid from state funds under this subchapter shall be sold under rules adopted by The Texas A&M University System. The proceeds of the sales shall be deposited to the credit of the fund established for predatory animal and rodent control.

(b) Any specimen taken under this subchapter may be presented free of charge to any state, county, or federal institution for scientific purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.006. BOUNTIES PROHIBITED. (a) A hunter or trapper acting under this subchapter may not collect a bounty from a county or any other source for an animal taken under this subchapter.

(b) The scalp of each animal taken under this subchapter shall be destroyed and each skin that has commercial value shall be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.007. CONSTRUCTION WITH PARKS AND WILDLIFE CODE. Section 71.004(b), Parks and Wildlife Code, does not apply to a hunter or trapper while performing duties under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.008. TAMPERING WITH TRAPS; CRIMINAL PENALTY. (a) A

person commits an offense if the person maliciously or wilfully tampers with all or any part of a trap set under this subchapter or removes a trap from the position in which it is placed by a hunter or trapper acting under this subchapter.

(b) An offense under this section is punishable by a fine of not less than \$50 or more than \$200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.009. STEALING TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person steals or fraudulently takes a trap belonging to the state or the United States Department of the Interior.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.010. STEALING ANIMALS FROM TRAPS; CRIMINAL PENALTY.

(a) A person commits an offense if the person steals an animal listed in Section 825.001 from a trap set under this subchapter or takes the animal from the trap without authority.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

(c) An animal stolen or taken in violation of this section is the property of the state. A complaint alleging a violation of this section must allege that the animal is owned by the state, and the only proof necessary to establish ownership shall consist of proving that the animal was taken from a trap that had been set by a hunter or trapper acting under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER B. PURCHASE OF POISON TO DESTROY CERTAIN ANIMAL PESTS**

Sec. 825.021. COMMISSIONERS COURT MAY PURCHASE POISON. (a) The commissioners court of a county may purchase poisons and related accessories required by citizens of the county to destroy prairie dogs, wildcats, gophers, ground squirrels, wolves, coyotes, rats,



English sparrows, and ravens.

(b) The commissioners court may furnish the poison to citizens of the county free or at cost.

(c) The commissioners court shall pay for the poison from the general fund of the county and shall deposit the proceeds of any sale to the credit of that fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.022. NOTICE CONCERNING POISON. (a) The commissioners court of a county acting under this subchapter shall determine the days on which the poison will be put out and shall give notice at least 20 days before the first day it is put out.

(b) The notice required by this section must be:

(1) published in at least one county newspaper, if one is available, for three successive issues; and

(2) posted in public places.

(c) The notice must state when the poison will be put out, the fact that it may be obtained from the commissioners court, and the terms on which it may be obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.024. DUTIES OF LAND HOLDERS, LESSEES, AND TENANTS.

(a) Each land holder whose premises are infested with any pests listed in Section 825.021 shall obtain and apply the poison as provided in the plans furnished by the commissioner of agriculture.

(b) Each lessee or tenant occupying any premises under contract shall obtain the poison and destroy any pests listed in Section 825.021 that infest the premises. Any expenses incurred under this subsection by a lessee or tenant shall be charged against the landowner and are collectible as any other valid debt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER C. BOUNTIES FOR PREDATORY ANIMALS**

Sec. 825.031. BOUNTIES FOR PREDATORY ANIMALS. (a) The commissioners court of a county may pay bounties for killing

predatory animals not listed on any state or federal protected species list.

(b) The commissioners court may determine which animals are predatory animals in that county.

(c) The commissioners court may determine the amount of a bounty to be paid under this section for each animal. The bounty shall be paid from the general fund of the county by a warrant drawn on that fund by the county judge on presentation of proof of destruction required by the commissioners court. A bounty paid under this section may not exceed \$50 for each animal unless approved by the Texas Parks and Wildlife Commission.

(d) The commissioners court may determine eligibility criteria for receiving a bounty under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 84, Sec. 1,2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1279, Sec. 1, eff. Aug. 30, 1999.

Sec. 825.032. ANGELINA, HENDERSON, OR TRINITY COUNTY: WOLVES AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Angelina, Henderson, or Trinity County may pay bounties for the destruction of wolves and other predatory animals in the county.

(b) The commissioners court may, by resolution entered on its minutes, provide for the destruction of wolves and other predatory animals, the method of destruction and proof necessary to entitle the person destroying the animal to receive the bounty, and the amount of the bounty to be paid for each animal.

(c) A bounty paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge on presentation of proof of destruction required by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.033. ARANSAS, BEE, REFUGIO, OR SAN PATRICIO COUNTY: RATTLESNAKES, WOLVES, COYOTES, PANTHERS, BOBCATS, AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Aransas, Bee, Refugio, or San Patricio County may pay bounties for the destruction of rattlesnakes, wolves, coyotes, panthers, bobcats, and other predatory

animals in the county to preserve game and to protect the interests of livestock and poultry raisers.

(b) The commissioners court may set the bounty in an amount not to exceed:

(1) \$5 for each wolf, coyote, panther, or bobcat;

(2) 50 cents for each raccoon, skunk, opossum, or other similar animal; and

(3) 10 cents for each rattlesnake.

(c) The commissioners court shall, by resolution entered on its minutes, specify the amount of the bounty to be paid for each animal and prescribe regulations and require proof necessary to protect the county's interest.

(d) The bounties paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.034. PANOLA COUNTY: WOLVES. (a) The Commissioners Court of Panola County may pay bounties on wolves in order to preserve game.

(b) The commissioners court may set the bounty in an amount not to exceed \$25 for each wolf killed. The bounty shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one wolf has been killed for each wolf paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.035. BORDEN COUNTY: RABBITS. (a) The Commissioners Court of Borden County may pay bounties for lawfully killing wild rabbits in the county to prevent property damage.

(b) The bounty may not exceed 10 cents for each rabbit and shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one rabbit has been killed for each rabbit paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.036. PRAIRIE DOGS. Prairie dogs are a public nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.037. EFFECT OF OTHER LAWS. This subchapter does not authorize:

- (1) the killing of an animal if the killing is prohibited by federal or state law or rule; or
- (2) the payment of a bounty for killing an animal if the killing is prohibited by federal or state law or rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## **CHAPTER 826. RABIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 826.001. SHORT TITLE. This chapter may be cited as the Rabies Control Act of 1981.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.002. DEFINITIONS. In this chapter:

- (1) "Animal" means a warm-blooded animal.
- (2) "Board" means the Texas Board of Health.
- (3) "Cat" means *Felis catus*.
- (4) "Commissioner" means the commissioner of health.
- (5) "Department" means the Texas Department of Health.
- (6) "Dog" means *Canis familiaris*.
- (7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.
- (8) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.
- (9) "Quarantine" means strict confinement of an animal specified in an order of the board or its designee:
  - (A) on the private premises of the animal's owner or at

a facility approved by the board or its designee; and

(B) under restraint by closed cage or paddock or in any other manner approved by board rule.

(10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

(11) "Stray" means roaming with no physical restraint beyond the premises of an animal's owner or keeper.

(12) "Livestock" means an animal raised for human consumption or an equine animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 1, eff. May 5, 1995.

#### **SUBCHAPTER B. GENERAL POWERS AND DUTIES OF BOARD AND LOCAL GOVERNMENTS**

Sec. 826.011. GENERAL POWERS AND DUTIES OF BOARD. (a) The board or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The board shall adopt rules necessary to effectively administer this chapter.

(c) The board or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the board or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The board or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This

chapter and the rules adopted by the board under this chapter are the minimum standards for rabies control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the rules adopted by the board.

(b) County ordinances or rules adopted under this section supersede this chapter and the rules of the board within that county so that dual enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES. (a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which the municipality is located; and

(2) the program established by this chapter and the rules adopted by the board.

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the rules of the board within that municipality so that multiple enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.016. CONTRACTS. The governing body of a municipality and the commissioners court of a county may enter into contracts or agreements with public or private entities to carry out the activities required or authorized under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.017. DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY.

(a) The commissioners court of each county and the governing body of each municipality shall designate an officer to act as the local rabies control authority for the purposes of this chapter.

(b) Except as restricted by board rule, the officer designated as the local rabies control authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local rabies control authority shall enforce:

(1) this chapter and the board rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local rabies control authority serves; and

(3) the rules adopted by the board under the area rabies quarantine provisions of Section 826.045.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 2, eff. May 5, 1995.

#### **SUBCHAPTER C. RABIES VACCINATIONS**

Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED. (a) Except as otherwise provided by board rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by board rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the board.

(c) A county or municipality may not register or license an animal that has not been vaccinated in accordance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0211. CONFIDENTIALITY OF CERTAIN INFORMATION IN RABIES VACCINATION CERTIFICATE; CRIMINAL PENALTY. (a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information, including a county or municipality that registers dogs and cats under Subchapter D, must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than 180 days; or
- (3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2005, 79th Leg., Ch. 1235 (H.B. 1426), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 1, eff.



June 15, 2007.

Sec. 826.022. VACCINATION; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and board rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

(c) If on the trial of an offense under this section the court finds that the person has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 3, eff. May 5, 1995.

Sec. 826.023. USE AND SALE OF RABIES VACCINE. (a) Rabies vaccine for animals may be administered only by or under the direct supervision of a veterinarian.

(b) A veterinarian may not administer or directly supervise the administration of rabies vaccine in this state unless the person is:

(1) licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine; or

(2) practicing veterinary medicine on an installation of the armed forces or National Guard.

(c) A person may not sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.

(d) This section does not prohibit a pharmacy licensed by the Texas State Board of Pharmacy from supplying rabies vaccine for animals to a licensed veterinarian.

(e) This section does not prohibit a veterinarian licensed by the State Board of Veterinary Medical Examiners from selling or dispensing rabies vaccine to an individual with whom the veterinarian has a veterinarian-client-patient relationship as described by Chapter 801, Occupations Code, for the sole purpose of allowing that

individual to administer the rabies vaccine to that individual's own livestock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 5, eff. May 5, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.810, eff. Sept. 1, 2001.

Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) administers or attempts to administer rabies vaccine in a manner not authorized by Section 826.023;
- (2) dispenses or attempts to dispense rabies vaccine in a manner not authorized by Section 826.023; or
- (3) sells or distributes rabies vaccine for animals in violation of Section 826.023(c).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.025. PROVISION OF VACCINE AND SERUM. (a) The department may provide vaccine and hyperimmune serum in accordance with board policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with board rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

(c) At the written request of the department, the attorney general or the county or district attorney for the county in which the recipient of the vaccine or serum resides may bring suit or start other proceedings in the name of the state to collect the reimbursement owed the department for the vaccine or serum.

(d) A suit or other proceeding may be brought against:

- (1) the recipient;
- (2) the parent, guardian, or other person legally responsible for the support of the recipient; or
- (3) a responsible third party.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

**SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS**

Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 requiring the registration of each dog and cat within the jurisdiction of the municipality or county.

(b) A dog or cat may not be subject to dual registration.

(c) The enforcing agency may collect a fee set by ordinance for the registration of each dog or cat and may retain the fees collected. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0311. CONFIDENTIALITY OF CERTAIN INFORMATION IN DOG AND CAT REGISTRY; CRIMINAL PENALTY. (a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense

under this subsection is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than 180 days; or
- (3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 2, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 2, eff.  
June 15, 2007.

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY. (a) A person commits an offense if:

- (1) the person fails or refuses to register or present for registration a dog or cat owned by the person; and
- (2) the animal is required to be registered under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 to require that:

- (1) each dog or cat be restrained by its owner;
- (2) each stray dog or cat be declared a public nuisance;
- (3) each unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee;
- (4) each stray dog or cat be impounded for a period set by ordinance or rule; and
- (5) a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.

(b) A jurisdiction may not be subject to dual restraint ordinances or rules.

(c) The enforcing agency may adopt an ordinance setting a fee for the impoundment and board of a dog or cat during the impoundment period. The animal's owner must pay the fee before the animal may be

released.

(d) The enforcing agency shall deposit the fees collected in the treasury of the enforcing agency. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 6, eff. May 5, 1995.

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to restrain a dog or cat owned by the person; and

(2) the animal is required to be restrained under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### **SUBCHAPTER E. REPORTS AND QUARANTINE**

Sec. 826.041. REPORTS OF RABIES. (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

(1) the name and address of the victim and of the animal's owner, if known; and

(2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 7, eff. May 5, 1995.

Sec. 826.042. QUARANTINE OF ANIMALS. (a) The board shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with board rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

(c) An owner shall submit for quarantine an animal that:

(1) is reported to be rabid or to have exposed an individual to rabies; or

(2) the owner knows or suspects is rabid or has exposed an individual to rabies.

(d) The owner shall submit the animal to the local rabies control authority of the county or municipality in which the exposure occurs.

(e) A veterinarian shall quarantine an animal that:

(1) is in the possession of the veterinarian; and

(2) the veterinarian knows or suspects is rabid or has exposed an individual to rabies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 8, eff. May 5, 1995.

Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL.

(a) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, the veterinarian or local rabies control authority shall release the animal to its owner when the quarantine period ends if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(b) If a veterinarian determines that a quarantined animal shows the clinical signs of rabies, the veterinarian or local rabies control authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the veterinarian or local rabies control authority shall remove the head or brain of the animal and submit it to the nearest department laboratory for testing.

(c) The owner of an animal that is quarantined under this chapter shall pay to the veterinarian or local rabies control authority the reasonable costs of the quarantine and disposition of the animal. The veterinarian or local rabies control authority may bring suit to collect those costs. The county in which the veterinarian is located may reimburse the veterinarian in a reasonable amount set by the county for the costs of the quarantine and disposition of an animal whose owner is unable to pay.

(d) The veterinarian or local rabies control authority may sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 9, eff. May 5, 1995.

Sec. 826.044. QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and board rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.045. AREA RABIES QUARANTINE. (a) If rabies is known to exist in an area, the board or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the board shall:

(1) define the borders of the quarantine area; and

(2) adopt permanent or emergency rules.

(c) The rules adopted under Subsection (b)(2) may include conditions for the restraint of carnivorous animals and the transportation of carnivorous animals into and out of the quarantine

area.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the board or its designee to declare a quarantine, unless the board or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the board supersede all other applicable ordinances or rules applying to the quarantine area and apply until the board or its designee removes the quarantine by declaration or until the rules expire or are revoked by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.046. VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates or attempts to violate a rule of the board adopted under Section 826.045 governing an area rabies quarantine.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.047. LIMITATION ON LIABILITY. A veterinarian performing duties under this chapter is not liable to the owner of an animal for the death of or injury to the animal except in a case of wilful misconduct or gross negligence.

Added by Acts 1995, 74th Leg., ch. 44, Sec. 11, eff. May 5, 1995.

Sec. 826.048. EXEMPTION FROM QUARANTINE REQUIREMENT FOR POLICE SERVICE ANIMALS. (a) In this section, "handler or rider" and "police service animal" have the meanings assigned by Section 38.151, Penal Code.

(b) A police service animal is exempt from the quarantine requirement of this subchapter if the animal bites a person while the animal is under routine veterinary care or while the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes. If after biting the person the animal



exhibits any abnormal behavior, the law enforcement agency and the animal's handler or rider shall make the animal available within a reasonable time for testing by the local health authority.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 2, eff. Sept. 1, 2001.

#### **SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES**

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES. (a) The board shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The board by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with board rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 12, eff. May 5, 1995.

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the board for those facilities; and

(2) the requirements for animal control officer training adopted under Chapter 829.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 13, eff. May 5, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. [1562](#)), Sec. 3, eff. September 1, 2007.

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a

hearing before the department.

(b) The department shall conduct the hearing held under this section in accordance with Chapter 2001, Government Code and the department's formal hearing rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 826.054. SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY. (a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and board rules.

(b) The suit shall be brought in a district court in the county in which the facility is located.

(c) When a court issues an order to a facility to cease operation, the local rabies control authority shall remove all animals housed in the facility to a shelter approved by the department. The county or municipality within whose jurisdiction the facility is located shall pay the cost of relocating the animals to an approved shelter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 14, eff. May 5, 1995.

Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY. (a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

(1) board rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

## CHAPTER 828. DOG AND CAT STERILIZATION

Sec. 828.001. DEFINITIONS. In this chapter:

(1) "New owner" means a person who is legally competent to enter into a binding contract and who is adopting a dog or cat from a releasing agency.

(2) "Releasing agency" means a public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(3) "Sterilization" means the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

(4) "Veterinarian" means a person licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 1, eff. May 27, 2005.

Sec. 828.002. REQUIREMENTS FOR ADOPTION. Except as provided by Section 828.013, a releasing agency may not release a dog or cat for adoption unless the animal has been sterilized or the release is made to a new owner who signs an agreement to have the animal sterilized.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.003. STERILIZATION AGREEMENT. (a) The sterilization agreement used by a releasing agency must contain:

- (1) the date of the agreement;
- (2) the names, addresses, and signatures of the releasing agency and the new owner;
- (3) a description of the animal to be adopted;
- (4) the sterilization completion date; and
- (5) a statement, printed in conspicuous, bold print, that sterilization of the animal is required under Chapter 828, Health and Safety Code, and that a violation of this chapter is a criminal

offense punishable as a Class C misdemeanor.

(b) The sterilization completion date contained in the sterilization agreement must be:

(1) the 30th day after the date of adoption in the case of an adult animal;

(2) the 30th day after a specified date estimated to be the date an adopted infant female animal becomes six months old or an adopted infant male animal becomes eight months old; or

(3) if the releasing agency has a written policy recommending sterilization of certain infant animals at an earlier date, the 30th day after the date contained in the written policy.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.0035. STATE BOARD OF VETERINARY MEDICAL EXAMINERS. The State Board of Veterinary Medical Examiners shall:

(1) develop information sheets regarding surgical or nonsurgical sterilization to be distributed by a releasing agency to a new owner; and

(2) adopt rules requiring an animal that has been sterilized under this chapter to receive an identification marker in a manner authorized by the board.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 2, eff. May 27, 2005.

Sec. 828.004. STERILIZATION REQUIRED. (a) Except as provided by this section, a new owner who signs an agreement under Section 828.002 shall have the adopted animal sterilized on or before the sterilization completion date stated in the agreement.

(b) If the sterilization completion date falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the first day that is not a Saturday, Sunday, or legal holiday.

(c) A releasing agency may extend the deadline for 30 days on presentation of a written report from a licensed veterinarian stating that the life or health of the adopted animal may be jeopardized by sterilization. There is no limit on the number of extensions that may be granted under this subsection.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.  
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 3, eff. May 27, 2005.

Sec. 828.0045. NONSURGICAL STERILIZATION. A licensed veterinarian may use nonsurgical methods and technologies as labeled and approved by the United States Food and Drug Administration or the United States Department of Agriculture for use by veterinarians to humanely and permanently render a dog or cat unable to reproduce.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 4, eff. May 27, 2005.

Sec. 828.005. CONFIRMATION OF STERILIZATION. (a) Except as provided by Section 828.006 or 828.007, each new owner who signs a sterilization agreement under Section 828.002 shall deliver to the releasing agency from which the animal was adopted a letter signed by the veterinarian who performed the sterilization.

(b) The letter must be delivered in person or by mail not later than the seventh day after the date on which the animal was sterilized.

(c) The letter must state that the animal has been sterilized, briefly describe the animal, and provide the date of sterilization.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.  
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 5, eff. May 27, 2005.

Sec. 828.006. LETTER CONCERNING ANIMAL'S DEATH. (a) If an adopted animal dies on or before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is dead.

(b) The letter must be delivered not later than the seventh day after the date of the animal's death and must describe the cause of death, if known, and provide the date of death.

(c) The letter required by this section is in lieu of the

letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.007. LETTER CONCERNING LOST OR STOLEN ANIMAL. (a) If an adopted animal is lost or stolen before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is lost or stolen.

(b) The letter must be delivered not later than the seventh day after the date of the animal's disappearance and must describe the circumstances surrounding the disappearance and provide the approximate date of the disappearance.

(c) The letter required by this section is in lieu of the letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.008. NOTICE OF FAILURE TO RECEIVE LETTER. A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 before the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 shall cause a complaint to be filed against the new owner. It is a presumption under this law that the failure of the new owner to deliver to the releasing agency a signed letter as required under Section 828.005, 828.006, or 828.007 is the result of the new owner's refusal to have the adopted animal sterilized. The new owner may rebut this presumption at the time of the hearing with the proof required under the above-mentioned sections.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.009. RECLAMATION. (a) A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 after the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 may promptly reclaim the animal from the new owner.

(b) A person may not prevent, obstruct, or interfere with a

reclamation under this section.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.010. CRIMINAL PENALTY. (a) A new owner that violates this chapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.011. ADOPTION STANDARDS. (a) Each releasing agency may set its own standards for potential adopters if those standards are applied in a fair and equal manner.

(b) If the releasing agency is a public facility, the standards must be reasonably related to the prevention of cruelty to animals and the responsible management of dogs and cats in the interest of preserving public health and welfare.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.012. SURGERY AND OTHER VETERINARY SERVICES. (a) Surgery or nonsurgical sterilization performed in accordance with this chapter must be performed by a veterinarian or a full-time student of an accredited college of veterinary medicine as provided by Chapter 801, Occupations Code.

(b) A veterinarian employed by a releasing agency may not perform nonemergency veterinary services other than sterilization on an animal that the releasing agency knows or should know has an owner. However, this subsection does not prevent a veterinarian employed by a releasing agency from performing veterinary services on an animal whose owner is indigent.

(c) A person associated with a releasing agency may not interfere with the independent professional judgment of a veterinarian employed by or under contract with the releasing agency.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.811, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 6, eff. May 27, 2005.

Sec. 828.013. EXEMPTIONS. This chapter does not apply to:

- (1) a dog or cat that is claimed from a releasing agency by a person who already owns the animal;
- (2) a releasing agency located in a municipality that has in effect an ordinance providing standards for dog and cat sterilization that exceed the requirements provided by this chapter;
- (3) an institution of higher education that purchases or otherwise procures a dog or cat for the purpose of biomedical research, testing, or teaching; or
- (4) a releasing agency located in:
  - (A) a county with a population of 20,000 or less; or
  - (B) a municipality with a population of 10,000 or less.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Amended by Acts 1993, 73rd Leg., ch. 794, Sec. 1, eff. June 18, 1993.

Sec. 828.014. ANIMAL FRIENDLY ACCOUNT. (a) The Texas Department of Health animal friendly account is a separate account in the general revenue fund. The account is composed of:

- (1) money deposited to the credit of the account under Section 502.291, Transportation Code; and
- (2) gifts, grants, donations, and legislative appropriations.

(b) The Texas Department of Health administers the account. The department may spend money credited to the account only to:

- (1) make grants to eligible organizations that sterilize animals owned by the general public at minimal or no cost; and
- (2) defray the cost of administering the account.

(c) The Texas Board of Health:

- (1) may accept gifts, donations, and grants from any source for the benefit of the account; and
- (2) by rule shall establish guidelines for spending money credited to the account.

(d) In this section "eligible organization" means:



- (1) a releasing agency;
- (2) an organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code, that has as its primary purpose:
  - (A) animal welfare; or
  - (B) sterilizing animals owned by the general public at minimal or no cost; or
- (3) a local nonprofit veterinary medical association that has an established program for sterilizing animals owned by the general public at minimal or no cost.

Added by Acts 1997, 75th Leg., ch. 657, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1292, Sec. 1, eff. June 16, 2001.

Sec. 828.015. ANIMAL FRIENDLY ADVISORY COMMITTEE. (a) The commissioner of public health shall appoint a seven-member animal friendly advisory committee, composed of:

- (1) one person licensed to practice veterinary medicine in this state;
- (2) one representative from a private releasing agency;
- (3) one representative from a public releasing agency;
- (4) one representative of an animal welfare organization;
- (5) two representatives of the general public; and
- (6) one representative from the Texas Department of Health.

(b) The commissioner shall designate one member as presiding officer of the committee.

(c) The committee shall:

- (1) meet at least twice each year or as called by the commissioner of health;
- (2) assist the Texas Board of Health in establishing guidelines for the expenditure of money credited to the animal friendly account; and
- (3) review, and make recommendations to the Texas Department of Health on, applications submitted to the department for grants funded with money credited to the animal friendly account.

(d) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Members of the committee serve staggered four-year terms with the terms of as near one-half as

possible of the members expiring on January 31 of each even-numbered year.

Added by Acts 1997, 75th Leg., ch. 657, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2001, 77th Leg., ch. 1292, Sec. 2, eff. June 16, 2001.

#### **CHAPTER 829. ANIMAL CONTROL OFFICER TRAINING**

Sec. 829.001. DEFINITIONS. In this chapter:

- (1) "Animal control officer" means a person who:
  - (A) is employed, appointed, or otherwise engaged primarily to enforce laws relating to animal control; and
  - (B) is not a peace officer.
- (2) "Department" means the Department of State Health Services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. [1562](#)), Sec. 1, eff. July 1, 2008.

Sec. 829.0015. APPLICABILITY OF CHAPTER. The commissioners court of a county that has a population of 75,000 or less may adopt an order exempting the county from the application of this chapter. This chapter does not apply within the boundaries of a county for which an order is adopted under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. [1562](#)), Sec. 1, eff. July 1, 2008.

Sec. 829.002. TRAINING REQUIRED. A person may not perform the duties of an animal control officer unless:

- (1) the person:
  - (A) completes a basic animal control course under this chapter not later than the first anniversary of the date the person assumes animal control duties; or
  - (B) completed a personnel training course on or before June 30, 2008, under Section 823.004 as it existed on that date; and
- (2) the person completes 30 hours of continuing education under this chapter during each three-year period following:

(A) the date the person completes the basic animal control course; or

(B) June 30, 2008, if the person completed a personnel training course under Subdivision (1)(B).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.003. TRAINING COURSES. (a) The department shall prescribe the standards and curriculum for basic and continuing education animal control courses. The curriculum for both the basic and continuing education courses must include the following topics:

(1) state laws governing animal control and protection and animal cruelty;

(2) animal health and disease recognition, control, and prevention;

(3) the humane care and treatment of animals;

(4) standards for care and control of animals in an animal shelter;

(5) standards and procedures for the transportation of animals;

(6) principles and procedures for capturing and handling stray domestic animals and wildlife, including principles and procedures to be followed with respect to an instrument used specifically for deterring the bite of an animal;

(7) first aid for injured animals;

(8) the documentation of animal cruelty evidence and courtroom procedures;

(9) animal shelter operations and administration;

(10) spaying and neutering, microchipping, and adoption;

(11) communications and public relations;

(12) state and federal laws for possession of controlled substances and other medications; and

(13) any other topics pertinent to animal control and animal shelter personnel.

(b) In prescribing the standards and curriculum of courses under this chapter, the department shall:

(1) determine what is considered satisfactory completion of a course;

(2) determine what is considered a passing grade on any postcourse tests and practical applications; and

(3) require that a person attend all sessions of a course.

(c) A basic animal control course must be at least 12 hours.

(d) In developing and approving the criteria and curriculum for animal control courses, the department shall consult with the Texas Animal Control Association and other animal control and animal protection organizations as the department considers appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 299 (H.B. 405), Sec. 2, eff. June 19, 2009.

Sec. 829.004. AVAILABILITY OF COURSES. (a) The department or the department's designee shall offer at least two basic animal control courses every calendar year in each of the department's zoonosis control regions.

(b) The department or the department's designee shall offer at least 12 hours of continuing education animal control courses each calendar year in each of the department's zoonosis control regions.

(c) The department shall ensure the additional availability of animal control courses through sponsors approved by the department, which may include the Texas Animal Control Association.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.005. FEE. The department and any authorized animal control course sponsor may charge reasonable fees to cover the cost of arranging and conducting an animal control course.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.006. ISSUANCE OF CERTIFICATE. (a) The department or the department's designee shall:

(1) maintain the training records for each person satisfactorily completing any course offered under this chapter for the purpose of documenting and ensuring that the person is in compliance with the requirements of this chapter; and

(2) issue a certificate to each person satisfactorily completing a course offered under this chapter that contains:

- (A) the person's name;
- (B) the name of the course; and
- (C) the date the course was completed.

(b) The department or the department's designee may charge a reasonable fee to cover the cost of issuing a certificate required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.007. FACILITY CERTIFICATE. The department shall issue a certificate to an animal shelter inspected under Section 823.003 or a quarantine or impoundment facility inspected under Section 826.052 that the department or the veterinarian conducting the inspection, as applicable, determines complies with this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.008. PAYMENT OF FEE. A political subdivision of this state may require that an individual pay a fee for a course or certificate under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.009. CIVIL REMEDY. A person may sue for injunctive relief to prevent or restrain a substantial violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

**TITLE 11. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS**  
**CHAPTER 841. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 841.001. LEGISLATIVE FINDINGS. The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.002. DEFINITIONS. In this chapter:

- (1) "Attorney representing the state" means an attorney employed by the civil division of the special prosecution unit to initiate and pursue a civil commitment proceeding under this chapter.
- (2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.
- (3) "Case manager" means a person employed by or under contract with the office to perform duties related to outpatient treatment and supervision of a person committed under this chapter.
- (3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.
- (4) "Office" means the Office of Violent Sex Offender

Management.

(5) "Predatory act" means an act directed toward individuals, including family members, for the primary purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

(9) "Sexually violent predator" has the meaning assigned by

Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.45, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 3, eff. September 1, 2011.

Sec. 841.003. SEXUALLY VIOLENT PREDATOR. (a) A person is a sexually violent predator for the purposes of this chapter if the person:

- (1) is a repeat sexually violent offender; and
- (2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

- (1) the person:
  - (A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;
  - (B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication;
  - (C) is adjudged not guilty by reason of insanity of a sexually violent offense; or
  - (D) is adjudicated by a juvenile court as having



engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Juvenile Justice Department under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(A) is convicted, but only if the sentence for the offense is imposed; or

(B) is adjudged not guilty by reason of insanity.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1323 (S.B. 511), Sec. 9, eff. December 1, 2013.

Sec. 841.004. SPECIAL PROSECUTION UNIT. The civil division of the special prosecution unit, separate from that part of the unit responsible for prosecuting criminal cases, is responsible for initiating and pursuing a civil commitment proceeding under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 6, eff. September 1, 2007.

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. (a) Except as provided by Subsection (b), the Office of State Counsel for Offenders shall represent an indigent person subject to a civil commitment proceeding under this chapter.

(b) If for any reason the Office of State Counsel for Offenders is unable to represent an indigent person described by Subsection (a) at a civil commitment proceeding under this chapter, the court shall appoint other counsel to represent the indigent person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Sec. 841.006. APPLICATION OF CHAPTER. This chapter does not:

- (1) prohibit a person committed under this chapter from filing at any time a petition for release under this chapter; or
- (2) create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B, C, or D.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT. The Office of Violent Sex Offender Management is responsible for providing appropriate and necessary treatment and supervision through the case management system.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 4, eff. September 1, 2011.

#### **SUBCHAPTER B. NOTICE OF POTENTIAL PREDATOR; INITIAL DETERMINATIONS**

Sec. 841.021. NOTICE OF POTENTIAL PREDATOR. (a) Before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

- (1) is serving a sentence for:
  - (A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or
  - (B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually

violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(b) Before the person's anticipated discharge date, the Department of State Health Services shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated discharge of a person who:

(1) is committed to the department after having been adjudged not guilty by reason of insanity of:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(c) The Texas Department of Criminal Justice or the Department of State Health Services, as appropriate, shall give the notice described by Subsection (a) or (b) not later than the first day of the 16th month before the person's anticipated release or discharge date, but under exigent circumstances may give the notice at any time before the anticipated release or discharge date. The notice must contain the following information:

(1) the person's name, identifying factors, anticipated residence after release or discharge, and criminal history;

(2) documentation of the person's institutional adjustment and actual treatment; and

(3) an assessment of the likelihood that the person will commit a sexually violent offense after release or discharge.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 5, eff. September 1, 2011.

Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive director of the Texas Department of Criminal Justice and the commissioner of the Department of State Health Services jointly shall

establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

- (1) one person from the Department of State Health Services;
- (2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;
- (3) one person from the Department of Public Safety;
- (4) two persons from the office or office personnel; and
- (5) one person from the Council on Sex Offender Treatment.

(b) The multidisciplinary team may request the assistance of other persons in making an assessment under this section.

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under Section 841.021(a) or (b), the team shall:

- (1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;
- (2) give notice of that assessment to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate; and
- (3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 6, eff. September 1, 2011.

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY. (a) Not later than the 60th day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the Department of State Health Services, as appropriate, shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment, the department required to make the

assessment shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment.

(b) If as a result of the assessment the Texas Department of Criminal Justice or the Department of State Health Services believes that the person suffers from a behavioral abnormality, the department making the assessment shall give notice of that assessment and provide corresponding documentation to the attorney representing the state not later than the 60th day after the date of a recommendation under Section 841.022(c).

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 7, eff. September 1, 2011.

#### **SUBCHAPTER C. PETITION ALLEGING PREDATOR STATUS**

Sec. 841.041. PETITION ALLEGING PREDATOR STATUS. (a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file, in a Montgomery County district court other than a family district court, a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b) A petition described by Subsection (a) must be:

- (1) filed not later than the 90th day after the date the person is referred to the attorney representing the state; and
- (2) served on the person as soon as practicable after the date the petition is filed.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 20, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. TRIAL**

Sec. 841.061. TRIAL. (a) Not later than the 270th day after

the date a petition is served on the person under Section 841.041, the judge shall conduct a trial to determine whether the person is a sexually violent predator.

(b) The person or the state is entitled to a jury trial on demand. A demand for a jury trial must be filed in writing not later than the 10th day before the date the trial is scheduled to begin.

(c) The person and the state are each entitled to an immediate examination of the person by an expert. All components of the examination must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

- (1) the right to appear at the trial;
- (2) except as provided by Subsection (f), the right to present evidence on the person's behalf;
- (3) the right to cross-examine a witness who testifies against the person; and
- (4) the right to view and copy all petitions and reports in the court file.

(e) The attorney representing the state may rely on the petition filed under Section 841.041 and supplement the petition with documentary evidence or live testimony.

(f) A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert examinations that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to expert examination on the state's behalf as required by this subsection is subject to the following consequences:

- (1) the person's failure to participate may be used as evidence against the person at trial;
- (2) the person may be prohibited from offering into evidence the results of an expert examination performed on the person's behalf; and
- (3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to an expert examination on the state's behalf.

(g) A judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053, Government Code, other than an objection made under Section 74.053(d), Government Code.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 21, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 7, eff. June 15, 2007.

Sec. 841.062. DETERMINATION OF PREDATOR STATUS. (a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination.

(b) A jury determination that the person is a sexually violent predator must be by unanimous verdict.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.063. CONTINUANCE. The judge may continue a trial or hearing conducted under this chapter if the person is not substantially prejudiced by the continuance and:

(1) on the request of either party and a showing of good cause; or

(2) on the judge's own motion in the due administration of justice.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 22, eff. Sept. 1, 2003.

Sec. 841.064. MISTRIAL. A trial following a mistrial must begin not later than the 90th day after the date a mistrial was declared in the previous trial, unless the later trial is continued as provided by Section 841.063.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

**SUBCHAPTER E. CIVIL COMMITMENT**

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. (a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or discharge from a state hospital and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 23, eff. Sept. 1, 2003.

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a Texas residential facility under contract with the office or at another location or facility approved by the office;
- (2) prohibiting the person's contact with a victim or potential victim of the person;
- (3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;
- (4) requiring the person's participation in and compliance with a specific course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office;
- (5) requiring the person to:



(A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;

(6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;

(7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone; and

(8) any other requirements determined necessary by the judge.

(b) A tracking service to which a person is required to submit under Subsection (a)(5) must:

(1) track the person's location in real time;

(2) be able to provide a real-time report of the person's location to the case manager at the case manager's request; and

(3) periodically provide a cumulative report of the person's location to the case manager.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the office. The office shall provide a copy of those requirements to the case manager and to the service providers.

(d) The court retains jurisdiction of the case with respect to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified at any time after notice to each affected party to the proceedings and a hearing.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 24, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 7(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.12, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 8, eff. September 1, 2011.

Sec. 841.083. TREATMENT; SUPERVISION. (a) The office shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed \$10,000 for providing the required treatment.

(b) The case manager shall provide supervision to the person. The provision of supervision must include a tracking service and, if required by court order, supervised housing.

(c) The office shall enter into appropriate memoranda of understanding with the Department of Public Safety for the provision of a tracking service and with the Department of Public Safety and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

(d) The office shall enter into appropriate memoranda of understanding for any necessary supervised housing. The office shall reimburse the applicable provider for housing costs under this section.

(e) The case manager shall:

(1) coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision;

(2) make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters; and

(3) provide a report to the office, semiannually or more frequently as necessary, which must include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the judge.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 25, eff. Sept.

1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.94, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 9, eff. September 1, 2011.

Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Section 841.082 and monthly shall pay to the office the amount that the office determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office immediately shall transfer the money to the appropriate service provider.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.13, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 10, eff. September 1, 2011.

Sec. 841.085. CRIMINAL PENALTY; PROSECUTION OF OFFENSE. (a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082.

(b) An offense under this section is a felony of the third degree.

(c) At the request of the local prosecuting attorney, an attorney employed by the civil division of the special prosecution unit described by Section 841.004 may assist in the trial of an offense under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 8, eff. September 1, 2007.

#### **SUBCHAPTER F. COMMITMENT REVIEW**

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The office shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the case manager shall provide a report of the biennial examination to the judge. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter. The case manager shall provide a copy of the report to the office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 11, eff. September 1, 2011.

Sec. 841.102. BIENNIAL REVIEW. (a) The judge shall conduct a biennial review of the status of the committed person.

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.103. HEARING. (a) At a hearing set by the judge

under Section 841.102, the person and the state are entitled to an immediate examination of the person by an expert.

(b) If the hearing is set under Section 841.102(c)(1), hearsay evidence is admissible if it is considered otherwise reliable by the judge.

(c) If the hearing is set under Section 841.102(c)(2), the committed person is entitled to be present and to have the benefit of all constitutional protections provided to the person at the initial civil commitment proceeding. On the request of the person or the attorney representing the state, the court shall conduct the hearing before a jury. The burden of proof at that hearing is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. PETITION FOR RELEASE**

Sec. 841.121. AUTHORIZED PETITION FOR RELEASE. (a) If the case manager determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the case manager shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.122. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE. On a person's commitment and annually after that commitment, the case manager shall provide the person with written notice of the person's right to file with the court and without the case manager's authorization a petition for release.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.123. REVIEW OF UNAUTHORIZED PETITION FOR RELEASE. (a) If the committed person files a petition for release without the case manager's authorization, the person shall serve the petition on the court and the attorney representing the state.

(b) On receipt of a petition for release filed by the committed person without the case manager's authorization, the judge shall attempt as soon as practicable to review the petition.

(c) Except as provided by Subsection (d), the judge shall deny without a hearing a petition for release filed without the case manager's authorization if the petition is frivolous or if:

(1) the petitioner previously filed without the case manager's authorization another petition for release; and

(2) the judge determined on review of the previous petition or following a hearing that:

(A) the petition was frivolous; or

(B) the petitioner's behavioral abnormality had not changed to the extent that the petitioner was no longer likely to engage in a predatory act of sexual violence.

(d) The judge is not required to deny a petition under Subsection (c) if probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.124. HEARING ON UNAUTHORIZED PETITION FOR RELEASE.

(a) If as authorized by Section 841.123 the judge does not deny a petition for release filed by the committed person without the case

manager's authorization, the judge shall conduct as soon as practicable a hearing on the petition.

(b) The petitioner and the state are entitled to an immediate examination of the person by an expert.

(c) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(d) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. MISCELLANEOUS PROVISIONS**

Sec. 841.141. RULEMAKING AUTHORITY. (a) The office by rule shall administer this chapter. Rules adopted by the office under this section must be consistent with the purposes of this chapter.

(b) The office by rule shall develop standards of care and case management for persons committed under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 12, eff. September 1, 2011.

Sec. 841.142. RELEASE OR EXCHANGE OF INFORMATION. (a) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(b) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to the case manager.

(c) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of

Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 13, eff. September 1, 2011.

Sec. 841.143. REPORT, RECORD, OR STATEMENT SUBMITTED TO COURT.

(a) A psychological report, drug and alcohol report, treatment record, diagnostic report, medical record, or victim impact statement submitted to the court under this chapter is part of the record of the court.

(b) Notwithstanding Subsection (a), the report, record, or statement must be sealed and may be opened only:

- (1) on order of the judge;
- (2) as provided by this chapter; or
- (3) in connection with a criminal proceeding as otherwise



provided by law.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.144. COUNSEL. (a) Immediately after the filing of a petition under Section 841.041, a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceeding.

(b) If the person is indigent, the court shall appoint counsel as appropriate under Section 841.005 to assist the person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 28, eff. Sept. 1, 2003.

Sec. 841.145. EXPERT. (a) At the person's own expense, a person who is examined under this chapter may retain an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf, including a biennial examination or other civil commitment proceeding to assess the person's status as a sexually violent predator.

(b) On the request of an indigent person examined under this chapter, the judge shall determine whether expert services for the person are necessary. If the judge determines that the services are necessary, the judge shall appoint an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf and shall approve compensation for the expert as appropriate under Subsection (c).

(c) The court shall approve reasonable compensation for expert services rendered on behalf of an indigent person on the filing of a certified compensation claim supported by a written statement specifying:

- (1) time expended on behalf of the person;
- (2) services rendered on behalf of the person;
- (3) expenses incurred on behalf of the person; and
- (4) compensation received in the same case or for the same services from any other source.

(d) The court shall ensure that an expert retained or appointed

under this section has for purposes of examination reasonable access to a person examined under this chapter, as well as to all relevant medical and psychological records and reports.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 5, eff. September 1, 2005.

Sec. 841.146. CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS. (a) On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The number and selection of jurors are governed by Chapter 33, Code of Criminal Procedure.

(b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) In an amount not to exceed \$2,500, the State of Texas shall pay all costs associated with a civil commitment proceeding conducted under Subchapter D. The State of Texas shall pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and shall pay the reasonable costs of the person's outpatient treatment and supervision.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 29, eff. Sept. 1, 2003.

Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. A person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for purposes of Section 15-a, Article I, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1462. PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM. Personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1463. FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR. The periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

- (1) an employee or officer of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, or the office;
- (2) a member of the multidisciplinary team established under Section 841.022;
- (3) an employee of the civil division of the special prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter; and
- (4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 31, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. [2034](#)), Sec. 9, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 14, eff. September 1, 2011.

Sec. 841.150. EFFECT OF SUBSEQUENT COMMITMENT OR CONFINEMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed by this chapter are suspended for the duration of any confinement of a person, or if applicable any other commitment of a person to a community center, mental health facility, or state school, by governmental action.

(b) In this section:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State school" has the meaning assigned by Section 531.002.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 15, eff. September 1, 2011.

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR.

(a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) This section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating:

(1) a civil commitment requirement imposed under Section 841.082; or

(2) a law of this state.

(c) Not later than the day preceding the date a correctional

facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, the facility shall notify the person's case manager in writing of the anticipated date and time of the person's release.

(d) A case manager, on request, shall provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 16, eff. September 1, 2011.

**TITLE 12. HEALTH AND MENTAL HEALTH**  
**CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1001.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Health and Human Services Commission.
- (2) "Commissioner" means the commissioner of state health services.
- (3) "Council" means the State Health Services Council.
- (4) "Department" means the Department of State Health Services.
- (5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.002. AGENCY. The department is an agency of the state.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.003. SUNSET PROVISION. The Department of State Health Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires

September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.03, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.09, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.11, eff. June 17, 2011.

#### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

Sec. 1001.021. STATE HEALTH SERVICES COUNCIL. (a) The State Health Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to public health, mental health, or substance abuse.

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council.

Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the executive commissioner or the Texas Ethics Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.024. TERMS. (a) Council members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.025. VACANCY. The governor by appointment shall fill the unexpired term of a vacancy on the council.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

(a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and



resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

- (1) at least 25 persons;
- (2) a governmental entity; or
- (3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.0305. LOCAL HEALTH ENTITY POLICY. In developing policy related to funding local health entities as defined by Section

117.001, the department shall consult with the Public Health Funding and Policy Committee established under Chapter 117.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 2, eff. September 1, 2011.

Sec. 1001.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.033. REPORT TO SECRETARY OF STATE. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) To assist the secretary of state in preparing the report required under Section 405.021, Government Code, the commissioner on a quarterly basis shall provide a report to the secretary of state detailing any projects funded by the department that provide assistance to colonias.

(c) The report must include:

(1) a description of any relevant projects;

(2) the location of each project;

(3) the number of colonia residents served by each project;

(4) the exact amount spent or the anticipated amount to be spent on each colonia served by each project;

(5) a statement of whether each project is completed and, if not, the expected completion date of the project; and

(6) any other information, as determined appropriate by the secretary of state.

(d) The commission shall require an applicant for funds administered by the commission to submit to the commission a colonia classification number, if one exists, for each colonia that may be

served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2005, 79th Leg., Ch. 828 (S.B. 827), Sec. 5, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 16, eff. June 15, 2007.

#### **SUBCHAPTER C. PERSONNEL**

Sec. 1001.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) The commissioner, with the advice of the council, shall

develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion,

age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

#### **SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT**

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. The department is responsible for administering human services programs regarding the public health, including:

(1) implementing the state's public health care delivery programs under the authority of the department;

(2) administering state health facilities, hospitals, and health care systems;

(3) developing and providing health care services, as directed by law;

(4) providing for the prevention and control of communicable diseases;

(5) providing public education on health-related matters, as directed by law;

(6) compiling and reporting health-related information, as directed by law;

(7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired

immunodeficiency syndrome and administering programs related to the human immunodeficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, bottled and vended drinking water, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. [2392](#)), Sec. 1, eff. September 1, 2013.

Sec. 1001.0711. SCHOOL HEALTH ADVISORY COMMITTEE. (a) The commission by rule shall establish a School Health Advisory Committee at the department to provide assistance to the council in establishing a leadership role for the department in support for and delivery of coordinated school health programs and school health services.

(b) The committee shall include at least:

(1) one representative from the Department of Agriculture, appointed by the commissioner of agriculture; and

(2) one representative from the Texas Education Agency, appointed by the commissioner of education.

(c) Section 2110.008, Government Code, does not apply to a committee created under this section.

Added by Acts 2005, 79th Leg., Ch. 784 (S.B. 42), Sec. 9, eff. June 17, 2005.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO MENTAL HEALTH. The department is responsible for administering human services programs regarding mental health, including:

(1) administering and coordinating mental health services at the local and state level;

(2) operating the state's mental health facilities; and

(3) inspecting, licensing, and enforcing regulations regarding mental health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO SUBSTANCE ABUSE. The department is responsible for administering human services programs regarding substance abuse, including:

(1) administering, coordinating, and contracting for the delivery of substance abuse prevention and treatment programs at the state and local level;

(2) inspecting, licensing, and enforcing regulations regarding substance abuse treatment facilities; and

(3) providing public education on substance abuse issues, as directed by law.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The department shall maintain a file on each written complaint filed with the department. The file must include:

(1) the name of the person who filed the complaint;

- (2) the date the complaint is received by the department;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(b) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the executive commissioner's and the department's policies and procedures relating to complaint investigation and resolution.

(c) The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.075. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.076. MENTAL HEALTH PROGRAM FOR VETERANS.

Without reference to the amendment of this subsection, this section was repealed by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. [2392](#)), Sec. 3, eff. September 1, 2013.

(a) In this section, "veteran" means a person who:

(1) has served in:

(A) the army, navy, air force, coast guard, or marine corps of the United States;



(B) the state military forces as defined by Section 437.001, Government Code; or

(C) an auxiliary service of one of those branches of the armed forces; and

(2) has been honorably discharged from the branch of the service in which the person served.

Added by Acts 2009, 81st Leg., R.S., Ch. 525 (S.B. 1325), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.13, eff. September 1, 2013.

Sec. 1001.077. ADULT DIABETES EDUCATION PROGRAM. (a) In counties with populations of more than 100,000, the department may assist hospital districts and county hospital systems in providing an adult diabetes education program. The program must be based on a curriculum developed by the Texas Diabetes Council.

(b) A hospital district or county hospital system that participates in the program shall:

(1) make the adult diabetes education program available in English and Spanish using the curriculum developed by the Texas Diabetes Council; and

(2) make the education program available in the county, including at each rural health clinic the district or system may have.

(c) The Texas Diabetes Council shall develop for the adult diabetes education program a curriculum emphasizing life choices that enable a diabetic patient to control the disease and improve the patient's standard of living.

Added by Acts 2011, 82nd Leg., R.S., Ch. 217 (H.B. 123), Sec. 1, eff. September 1, 2011.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 1147 (S.B. 126), Sec. 1, and Ch. 1143 (S.B. 58), Sec. 3, see other Sec. 1001.078.

Sec. 1001.078. FUNDING FORMULA; PUBLIC HEALTH EVALUATION. (a) In this section:

(1) "Health service region" means a public health region designated under Section 121.007.

(2) "Local health department" means a local health department established under Subchapter D, Chapter 121.

(3) "Local health unit" has the meaning assigned by Section 121.004.

(4) "Public health district" means a health district established under Subchapter E, Chapter 121.

(b) The department, in collaboration with the Public Health Funding and Policy Committee established under Section 117.051, shall:

(1) develop funding formulas for federal and state funds appropriated to the department to be allocated to local health departments, local health units, public health districts, and health service regions' regional headquarters, based on population, population density, disease burden, social determinants of health, local efforts to prevent disease, and other relevant factors as determined by the department and committee;

(2) evaluate the feasibility and benefits of placing a cap on the percentage of public health funds that can be used on administrative costs at local health departments, local health units, public health districts, and health service regions' regional headquarters; and

(3) evaluate public health functions provided by the department, local health departments, local health units, public health districts, and health service regions' regional headquarters and determine if another entity, including a private entity, can provide those functions more effectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 1147 (S.B. 126), Sec. 1, and Ch. 1143 (S.B. 58), Sec. 3

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, see other Sec. 1001.078.

Sec. 1001.078. MENTAL HEALTH AND SUBSTANCE ABUSE PUBLIC REPORTING SYSTEM. (a) The department, in collaboration with the commission, shall establish and maintain a public reporting system of performance and outcome measures relating to mental health and substance abuse services established by the Legislative Budget Board, the department, and the commission. The system must allow external users to view and compare the performance, outputs, and outcomes of:

- (1) community centers established under Subchapter A, Chapter 534, that provide mental health services;
- (2) Medicaid managed care pilot programs that provide mental health services; and
- (3) agencies, organizations, and persons that contract with the state to provide substance abuse services.

(b) The system must allow external users to view and compare the performance, outputs, and outcomes of the Medicaid managed care programs that provide mental health services.

(c) The department shall post the performance, output, and outcome measures on the department's website so that the information is accessible to the public. The department shall post the measures quarterly or semiannually in accordance with when the measures are reported to the department.

(d) The department shall consider public input in determining the appropriate outcome measures to collect in the public reporting system. To the extent possible, the department shall include outcome measures that capture inpatient psychiatric care diversion, avoidance of emergency room use, criminal justice diversion, and the numbers of people who are homeless served.

(e) The commission shall conduct a study to determine the feasibility of establishing and maintaining the public reporting system, including, to the extent possible, the cost to the state and impact on managed care organizations and providers of collecting the outcome measures required by Subsection (d). Not later than December 1, 2014, the commission shall report the results of the study to the legislature and appropriate legislative committees.

(f) The department shall ensure that information reported through the public reporting system does not permit the identification of an individual.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1143 (S.B. 58), Sec. 3, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1147 (S.B. 126), Sec. 1, eff. September 1, 2013.

Sec. 1001.079. PUBLIC HEALTH THREAT POLICY. (a) In this section, "local health department" means a local health department established under Subchapter D, Chapter 121.

(b) The department shall create a policy to allow a local health department flexibility, to the extent allowed under federal law, in the use of personnel and other resources during disaster response activities, outbreaks, and other appropriate public health threats.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Sec. 1001.080. HEALTH INSURANCE COVERAGE INFORMATION. (a) In this section, "individual's legally authorized representative" means:

- (1) a parent, managing conservator, or guardian of an individual, if the individual is a minor;
- (2) a guardian of an individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or
- (3) an agent of the individual authorized under a durable power of attorney for health care.

(b) This section applies to health or mental health benefits, services, or assistance provided by the department that the department anticipates will be impacted by a health insurance exchange as defined by Section 1001.081(a), including:

- (1) community primary health care services provided under Chapter 31;
- (2) women's and children's health services provided under Chapter 32;
- (3) services for children with special health care needs provided under Chapter 35;
- (4) epilepsy program assistance provided under Chapter 40;
- (5) hemophilia program assistance provided under Chapter

41;

- (6) kidney health care services provided under Chapter 42;
- (7) human immunodeficiency virus infection and sexually transmitted disease prevention programs and services provided under Chapter 85;
- (8) immunization programs provided under Chapter 161;
- (9) programs and services provided by the Rio Grande State Center under Chapter 252;
- (10) mental health services for adults provided under Chapter 534;
- (11) mental health services for children provided under Chapter 534;
- (12) the NorthSTAR Behavioral Health Program provided under Chapter 534;
- (13) programs and services provided by community mental health hospitals under Chapter 552;
- (14) programs and services provided by state mental health hospitals under Chapter 552; and
- (15) any other health or mental health program or service designated by the department.

(c) Subject to Subsection (d), the department may not provide health or mental health benefits, services, or assistance described in Subsection (b) unless the individual applying to receive the benefits, services, or assistance submits to the department on the form prescribed by the department:

(1) a statement by the individual or the individual's legally authorized representative attesting that the individual does not have access to private health care insurance that provides coverage for the benefit, service, or assistance; or

(2) if the individual has access to private health care insurance that provides coverage for the benefit, service, or assistance, the information and authorization necessary for the department to submit a claim for reimbursement from the insurer for the benefit, service, or assistance.

(d) The department may waive the prohibition under Subsection (c) for an individual or for health or mental health benefits, services, or assistance described in Subsection (b) if the department determines that a benefit, service, or assistance is necessary during a crisis or emergency.

(e) The executive commissioner shall adopt rules necessary to

implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

Sec. 1001.081. HEALTH INSURANCE EXCHANGE INFORMATION. (a) In this section:

(1) "Health insurance exchange" means an American Health Benefit Exchange administered by the federal government under 42 U.S.C. Section 18041 or created under 42 U.S.C. Section 18031.

(2) "Individual's legally authorized representative" has the meaning assigned by Section 1001.080(a).

(b) The department may develop informational materials regarding health care insurance coverage and subsidies available under a health insurance exchange.

(c) The department shall provide the informational materials regarding health care insurance coverage and subsidies available under a health insurance exchange to an individual or the individual's legally authorized representative who:

(1) applies to receive health or mental health benefits, services, or assistance described in Section 1001.080(b); and

(2) has an income above 100 percent of the federal poverty level.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

For expiration of this section, see Subsection (b).

Sec. 1001.083. REPORT ON COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. (a) Not later than December 1, 2016, the department shall prepare and submit to the legislature a report containing information about persons receiving court-ordered outpatient mental health services in this state and the effectiveness of those services.

(b) This section expires September 1, 2017.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 10, eff. September 1, 2013.

Text of subchapter effective on September 1, 2009, but only if a specific appropriation is provided as described by Acts 2009, 81st Leg., R.S., Ch. 1238, Sec. 7(f), which states: This section does not make an appropriation. This section takes effect only if a specific appropriation for the implementation of the section is provided in a general appropriations act of the 81st Legislature.

**SUBCHAPTER F. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM (MEDCARES)**

Sec. 1001.151. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM GRANT PROGRAM. (a) The department shall establish the Texas Medical Child Abuse Resources and Education System (MEDCARES) grant program to award grants for the purpose of developing and supporting regional programs to improve the assessment, diagnosis, and treatment of child abuse and neglect as described by the report submitted to the 80th Legislature by the committee on pediatric centers of excellence relating to abuse and neglect in accordance with Section 266.0031, Family Code, as added by Chapter 1406 (S.B. 758), Acts of the 80th Legislature, Regular Session, 2007.

(b) The department may award grants to hospitals or academic health centers with expertise in pediatric health care and a demonstrated commitment to developing basic and advanced programs and centers of excellence for the assessment, diagnosis, and treatment of child abuse and neglect.

(c) The department shall encourage collaboration among grant recipients in the development of program services and activities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.152. USE OF GRANT. A grant awarded under this subchapter may be used to support:

(1) comprehensive medical evaluations, psychosocial assessments, treatment services, and written and photographic documentation of abuse;

(2) education and training for health professionals, including physicians, medical students, resident physicians, child

abuse fellows, and nurses, relating to the assessment, diagnosis, and treatment of child abuse and neglect;

(3) education and training for community agencies involved with child abuse and neglect, law enforcement officials, child protective services staff, and children's advocacy centers involved with child abuse and neglect;

(4) medical case reviews and consultations and testimony regarding those reviews and consultations;

(5) research, data collection, and quality assurance activities, including the development of evidence-based guidelines and protocols for the prevention, evaluation, and treatment of child abuse and neglect;

(6) the use of telemedicine and other means to extend services from regional programs into underserved areas; and

(7) other necessary activities, services, supplies, facilities, and equipment as determined by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.153. MEDCARES ADVISORY COMMITTEE. The executive commissioner shall establish an advisory committee to advise the department and the executive commissioner in establishing rules and priorities for the use of grant funds awarded through the program. The advisory committee is composed of the following nine members:

(1) the state Medicaid director or the state Medicaid director's designee;

(2) the medical director for the Department of Family and Protective Services or the medical director's designee; and

(3) as appointed by the executive commissioner:

(A) two pediatricians with expertise in child abuse or neglect;

(B) a nurse with expertise in child abuse or neglect;

(C) a representative of a pediatric residency training program;

(D) a representative of a children's hospital;

(E) a representative of a children's advocacy center;

and

(F) a member of the Governor's EMS and Trauma Advisory



Council.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.154. GIFTS AND GRANTS. The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.155. REQUIRED REPORT. Not later than December 1 of each even-numbered year, the department, with the assistance of the advisory committee established under this subchapter, shall submit a report to the governor and the legislature regarding the grant activities of the program and grant recipients, including the results and outcomes of grants provided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.156. RULES. The executive commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.157. APPROPRIATION REQUIRED. The department is not required to award a grant under this subchapter unless the department is specifically appropriated money for purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

**Subchapter H, consisting of Secs. 1001.201 to 1001.204, was added by**

Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2.

For another Subchapter H, consisting of Secs. 1001.201 to 1001.206, added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, see Sec. 1001.201 et seq., post.

**SUBCHAPTER H. MENTAL HEALTH PROGRAM FOR VETERANS**

Sec. 1001.201. DEFINITIONS. In this subchapter:

- (1) "Peer" means a person who is a veteran or a veteran's family member.
- (2) "Veteran" means a person who has served in:
  - (A) the army, navy, air force, coast guard, or marine corps of the United States;
  - (B) the state military forces as defined by Section 431.001, Government Code; or
  - (C) an auxiliary service of one of those branches of the armed forces.
- (3) "Volunteer coordinator" means a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.

Sec. 1001.202. GENERAL POWERS AND DUTIES. (a) The department shall develop a mental health intervention program for veterans. The program must include:

- (1) peer-to-peer counseling;
- (2) access to licensed mental health professionals for volunteer coordinators and peers;
- (3) training approved by the department for peers;
- (4) technical assistance for volunteer coordinators and peers;
- (5) grants to regional and local organizations providing services under this subchapter;
- (6) recruitment, retention, and screening of community-based therapists;
- (7) suicide prevention training for volunteer coordinators and peers; and
- (8) veteran jail diversion services, including veterans courts.

(b) The department shall solicit and ensure that specialized training is provided to persons who are peers and who want to provide peer-to-peer counseling or other peer-to-peer services under the program.

(c) The department may adopt rules necessary to implement this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.

Sec. 1001.203. GRANTS. (a) The department shall establish a grant program through which the department may award grants to regional and local organizations for the delivery of programs or services described by this subchapter.

(b) A grant awarded under this section must:

- (1) emphasize direct services to veterans provided by peers;
- (2) leverage additional local resources to provide funding for programs or services for veterans; and
- (3) increase the capacity of the mental health program for veterans.

(c) A grant awarded under this section may not be used to supplant existing expenditures associated with programs or services within the department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.

Sec. 1001.204. ANNUAL REPORT. Not later than December 1 of each year, the department shall submit a report to the governor and the legislature that includes:

- (1) the number of veterans who received services through the mental health program for veterans;
- (2) the number of peers and volunteer coordinators trained;
- (3) a summary of the grants awarded and services provided through those grants;
- (4) an evaluation of the services provided under this subchapter; and
- (5) recommendations for program improvements.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.

**Subchapter H, consisting of Secs. 1001.201 to 1001.206, was added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4.**

**For another Subchapter H, consisting of Secs. 1001.201 to 1001.204, added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, see Sec. 1001.201 et seq., post.**

**SUBCHAPTER H. MENTAL HEALTH FIRST AID TRAINING**

Sec. 1001.201. DEFINITIONS. In this subchapter:

(1) "Educator" means a person who is required to hold a certificate issued under Subchapter B, Chapter 21, Education Code.

(2) "Local mental health authority" has the meaning assigned by Section 531.002 and includes the local behavioral health authority for the NorthSTAR Behavioral Health Program.

(3) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.

Sec. 1001.202. GRANTS FOR TRAINING OF MENTAL HEALTH FIRST AID TRAINERS. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to local mental health authorities to contract with persons approved by the department to train employees or contractors of the authorities as mental health first aid trainers.

(b) Except as provided by Subsection (c), the department shall make each grant to a local mental health authority under this section in an amount equal to \$1,000 times the number of employees or contractors of the authority whose training as mental health first aid trainers will be paid by the grant.

(c) For each state fiscal year, the total amount the department may grant to a local mental health authority under this section may not exceed the lesser of \$30,000 or three percent of the funds appropriated to the department for making grants under this section.

(d) The executive commissioner shall adopt rules to establish the requirements for a person to be approved by the department to

train employees or contractors of a local mental health authority as mental health first aid trainers. The rules must ensure that a person who is approved by the department is qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan for use by the employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to help an individual experiencing a mental health crisis obtain appropriate professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(e) Two or more local mental health authorities may collaborate and share resources to provide training for employees or contractors of the authorities under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. [3793](#)), Sec. 4, eff. September 1, 2013.

Sec. 1001.203. GRANTS FOR TRAINING CERTAIN EDUCATORS IN MENTAL HEALTH FIRST AID. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to local mental health authorities to provide an approved mental health first aid training program, administered by mental health first aid trainers, at no cost to educators.

(b) For each state fiscal year, the total amount the department may grant to a local mental health authority under this section may not exceed the lesser of \$40,000 or three percent of the funds appropriated to the department for making grants under this section.

(c) Subject to the limit provided by Subsection (b), out of the funds appropriated to the department for making grants under this section, the department shall grant \$100 to a local mental health

authority for each educator who successfully completes a mental health first aid training program provided by the authority under this section.

(d) A mental health first aid training program provided by a local mental health authority under this section must:

(1) be conducted by a person trained as a mental health first aid trainer;

(2) provide participants with the skills necessary to help an individual experiencing a mental health crisis until the individual is able to obtain appropriate professional care; and

(3) include:

(A) instruction in a five-step strategy for helping an individual experiencing a mental health crisis, including assessing risk, listening respectfully to and supporting the individual, and identifying professional help and other supports for the individual;

(B) an introduction to the risk factors and warning signs for mental illness and substance abuse problems;

(C) experiential activities to increase participants' understanding of the impact of mental illness on individuals and families; and

(D) a presentation of evidence-supported treatment and self-help strategies.

(e) A local mental health authority may contract with a regional education service center to provide a mental health first aid training program to educators under this section.

(f) Two or more local mental health authorities may collaborate and share resources to develop and operate a mental health first aid training program under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. [3793](#)), Sec. 4, eff. September 1, 2013.

Sec. 1001.204. PLANS FOR MENTAL HEALTH FIRST AID TRAINING PROGRAMS. (a) Not later than October 1 of each state fiscal year for which a local mental health authority will seek a grant from the department under Section 1001.203, the authority shall submit to the department a plan demonstrating the manner in which grants made to the authority under that section will be used:

(1) to train individuals in mental health first aid

throughout the authority's local service area to maximize the number of children who have direct contact with an individual who has successfully completed a mental health first aid training program provided by the authority;

(2) to meet the greatest needs of the authority's local service area, as identified by the authority; and

(3) to complement existing resources and not duplicate established mental health first aid training efforts.

(b) The department may not make a grant to a local mental health authority under Section 1001.203 unless the department has evaluated a plan submitted by the authority under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.

Sec. 1001.205. REPORTS. (a) Not later than July 1 of each year, a local mental health authority shall provide to the department the number of:

(1) employees and contractors of the authority who were trained as mental health first aid trainers under Section 1001.202;

(2) educators who completed a mental health first aid training program offered by the authority under Section 1001.203 during the preceding calendar year; and

(3) individuals who are not educators who completed a mental health first aid training program offered by the authority during the preceding calendar year.

(b) Not later than August 1 of each year, the department shall compile the information submitted by local mental health authorities as required by Subsection (a) and submit a report to the legislature containing the number of:

(1) authority employees and contractors trained as mental health first aid trainers;

(2) educators who completed a mental health first aid training program provided by an authority during the preceding calendar year; and

(3) individuals who are not educators who completed a mental health first aid training program provided by an authority during the preceding calendar year.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4,

eff. September 1, 2013.

Sec. 1001.206. LIABILITY. A person who has completed a mental health first aid training program offered by a local mental health authority under this subchapter and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act performed in attempting to assist the individual unless the act is wilfully or wantonly negligent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.

**CHAPTER 1002. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1002.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Institute of Health Care Quality and Efficiency established under this chapter.

(2) "Commission" means the Health and Human Services Commission.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Health care collaborative" has the meaning assigned by Section 848.001, Insurance Code.

(6) "Health care facility" means:

(A) a hospital licensed under Chapter 241;

(B) an institution licensed under Chapter 242;

(C) an ambulatory surgical center licensed under Chapter 243;

(D) a birthing center licensed under Chapter 244;

(E) an end stage renal disease facility licensed under Chapter 251; or

(F) a freestanding emergency medical care facility licensed under Chapter 254.

(7) "Institute" means the Texas Institute of Health Care Quality and Efficiency established under this chapter.



(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(13) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from

care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.002. ESTABLISHMENT; PURPOSE. The Texas Institute of Health Care Quality and Efficiency is established to improve health care quality, accountability, education, and cost containment in this state by encouraging health care provider collaboration, effective health care delivery models, and coordination of health care services.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

#### **SUBCHAPTER B. ADMINISTRATION**

Sec. 1002.051. APPLICATION OF SUNSET ACT. The institute is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2017.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.052. COMPOSITION OF BOARD OF DIRECTORS. (a) The institute is governed by a board of 15 directors appointed by the governor.

(b) The following ex officio, nonvoting members also serve on the board:

- (1) the commissioner of the department;
- (2) the executive commissioner;
- (3) the commissioner of insurance;
- (4) the executive director of the Employees Retirement System of Texas;
- (5) the executive director of the Teacher Retirement System

of Texas;

(6) the state Medicaid director of the Health and Human Services Commission;

(7) the executive director of the Texas Medical Board;

(8) the commissioner of the Department of Aging and Disability Services;

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board; and

(11) a representative from each state agency or system of higher education that purchases or provides health care services, as determined by the governor.

(c) The governor shall appoint as board members health care providers, payors, consumers, and health care quality experts or persons who possess expertise in any other area the governor finds necessary for the successful operation of the institute.

(d) A person may not serve as a voting member of the board if the person serves on or advises another board or advisory board of a state agency.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.053. TERMS OF OFFICE. (a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(b) Board members may serve consecutive terms.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.054. ADMINISTRATIVE SUPPORT. (a) The institute is administratively attached to the commission.

(b) The commission shall coordinate administrative responsibilities with the institute to streamline and integrate the institute's administrative operations and avoid unnecessary duplication of effort and costs.

(c) The institute may collaborate with, and coordinate its administrative functions, including functions related to research and reporting activities with, other public or private entities, including academic institutions and nonprofit organizations, that perform research on health care issues or other topics consistent with the purpose of the institute.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.055. EXPENSES. (a) Members of the board serve without compensation but, subject to the availability of appropriated funds, may receive reimbursement for actual and necessary expenses incurred in attending meetings of the board.

(b) Information relating to the billing and payment of expenses under this section is subject to Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.056. OFFICER; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest, personally or through an employer, in a matter before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall:

(1) file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business; and

(2) update the statements described by Subdivision (1) at least annually.

(d) A statement filed under Subsection (c) is subject to Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT.

(a) The board may not compensate, employ, or contract with any individual who serves as a member of the board of, or on an advisory board or advisory committee for, any other governmental body, including any agency, council, or committee, in this state.

(b) The board may not compensate, employ, or contract with any person that provides financial support to the board, including a person who provides a gift, grant, or donation to the board.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least once each calendar quarter.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the institute.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.059. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.060. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the institute is confidential

and is not subject to disclosure under Chapter 552, Government Code.

(b) The institute shall comply with all state and federal laws and rules relating to the protection, confidentiality, and transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act, 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2.

(c) The commission, department, or institute or an officer or employee of the commission, department, or institute, including a board member, may not disclose any information that is confidential under this section.

(d) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding.

(e) An officer or employee of the commission, department, or institute, including a board member, may not be examined in a civil, criminal, special, administrative, or other proceeding as to information that is confidential under this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.061. FUNDING. (a) The institute may be funded through the General Appropriations Act and may request, accept, and use gifts, grants, and donations as necessary to implement its functions.

(b) The institute may participate in other revenue-generating activity that is consistent with the institute's purposes.

(c) Except as otherwise provided by law, each state agency represented on the board as a nonvoting member shall provide funds to support the institute and implement this chapter. The commission shall establish a funding formula to determine the level of support each state agency is required to provide.

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

**SUBCHAPTER C. POWERS AND DUTIES**

Sec. 1002.101. GENERAL POWERS AND DUTIES. The institute shall make recommendations to the legislature on:

(1) improving quality and efficiency of health care delivery by:

(A) providing a forum for regulators, payors, and providers to discuss and make recommendations for initiatives that promote the use of best practices, increase health care provider collaboration, improve health care outcomes, and contain health care costs;

(B) researching, developing, supporting, and promoting strategies to improve the quality and efficiency of health care in this state;

(C) determining the outcome measures that are the most effective measures of quality and efficiency:

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures based on expert consensus;

(D) reducing the incidence of potentially preventable events; and

(E) creating a state plan that takes into consideration the regional differences of the state to encourage the improvement of the quality and efficiency of health care services;

(2) improving reporting, consolidation, and transparency of health care information; and

(3) implementing and supporting innovative health care collaborative payment and delivery systems under Chapter 848, Insurance Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.102. GOALS FOR QUALITY AND EFFICIENCY OF HEALTH CARE; STATEWIDE PLAN. (a) The institute shall study and develop recommendations to improve the quality and efficiency of health care delivery in this state, including:

(1) quality-based payment systems that align payment incentives with high-quality, cost-effective health care;

(2) alternative health care delivery systems that promote

health care coordination and provider collaboration;

(3) quality of care and efficiency outcome measurements that are effective measures of prevention, wellness, coordination, provider collaboration, and cost-effective health care; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers.

(b) The institute shall study and develop recommendations for measuring quality of care and efficiency across:

(1) all state employee and state retiree benefit plans;

(2) employee and retiree benefit plans provided through the Teacher Retirement System of Texas;

(3) the state medical assistance program under Chapter 32, Human Resources Code; and

(4) the child health plan under Chapter 62.

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(e) In developing recommendations under Subsections (a) and (b), the institute may not base its recommendations solely on actuarial data.

(f) Using the studies described by Subsections (a) and (b), the institute shall develop recommendations for a statewide plan for quality and efficiency of the delivery of health care.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

#### **SUBCHAPTER D. HEALTH CARE COLLABORATIVE GUIDELINES AND SUPPORT**

Sec. 1002.151. INSTITUTE STUDIES AND RECOMMENDATIONS REGARDING HEALTH CARE PAYMENT AND DELIVERY SYSTEMS. (a) The institute shall study and make recommendations for alternative health care payment and delivery systems.

(b) The institute shall recommend methods to evaluate a health



care collaborative's effectiveness, including methods to evaluate:

- (1) the efficiency and effectiveness of cost-containment methods used by the collaborative;
- (2) alternative health care payment and delivery systems used by the collaborative;
- (3) the quality of care;
- (4) health care provider collaboration and coordination;
- (5) the protection of patients;
- (6) patient satisfaction; and
- (7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

#### **SUBCHAPTER E. IMPROVED TRANSPARENCY**

Sec. 1002.201. HEALTH CARE ACCOUNTABILITY; IMPROVED TRANSPARENCY. (a) With the assistance of the department, the institute shall complete an assessment of all health-related data collected by the state, what information is available to the public, and how the public and health care providers currently benefit and could potentially benefit from this information, including health care cost and quality information.

(b) The institute shall develop a plan:

- (1) for consolidating reports of health-related data from various sources to reduce administrative costs to the state and reduce the administrative burden to health care providers and payors;
- (2) for improving health care transparency to the public and health care providers by making information available in the most effective format; and
- (3) providing recommendations to the legislature on enhancing existing health-related information available to health care providers and the public, including provider reporting of additional information not currently required to be reported under existing law, to improve quality of care.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

Sec. 1002.202. ALL PAYOR CLAIMS DATABASE. (a) The institute shall study the feasibility and desirability of establishing a centralized database for health care claims information across all payors.

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(c) The institute shall consult with the department and the Texas Department of Insurance to develop recommendations to submit to the legislature on the establishment of the centralized claims database described by Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 3.01, eff. September 28, 2011.

### CHAPTER 1003. AUTOLOGOUS STEM CELL BANK FOR RECIPIENTS OF BLOOD AND

**TISSUE COMPONENTS WHO ARE THE LIVE HUMAN DONORS OF THE ADULT STEM CELLS**

Sec. 1003.001. ESTABLISHMENT OF ADULT STEM CELL BANK. (a) If the executive commissioner of the Health and Human Services Commission determines that it will be cost-effective and increase the efficiency or quality of health care, health and human services, and health benefits programs in this state, the executive commissioner by rule shall establish eligibility criteria for the creation and operation of an autologous adult stem cell bank.

(b) In adopting the rules under Subsection (a), the executive commissioner shall consider:

(1) the ability of the applicant to establish, operate, and maintain an autologous adult stem cell bank and to provide related services; and

(2) the demonstrated experience of the applicant in operating similar facilities in this state.

(c) This section does not affect the application of or apply to Chapter 162.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 14.01, eff. September 28, 2011.